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**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

DAVID GRUBER  
PRESIDENT

LARRY BEACH BECKER  
VICE-PRESIDENT

Tuesday, 6:30 p.m.,  
January 8, 2008

25 Van Ness Avenue, #70, Lower Level

**AGENDA**

DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

A. 811 Gonzalez Dr. AT070218

The tenant appeals the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

B. 570 O'Farrell #119 AT070215

The tenant appeals the decision approving utility passthroughs on the grounds of financial hardship.

C. 25 Madrone Ave. AT070206

The tenant appeals the decision denying claims of decreased housing services.

D. 1550 Fell St., Unit B AL070204

The landlord appeals the decision denying a request for rescission of a Notice of Intent to Withdraw Residential Units from the Rental Market.





E. 1393 – 27<sup>th</sup> Ave. #2

AL070205

The landlord appeals the decision denying a petition for rent increase based on comparable rents.

F. 350 Laguna Honda Blvd.

AT070207

The tenant appeals the decision granting rent increases based on increased operating expenses, alleging that the landlord has failed to perform necessary repairs.

G. 3531 – 21<sup>st</sup> St.

AT070208

The tenant appeals the decision denying a claim of unlawful rent increase.

H. 3280 – 17<sup>th</sup> St.

AL070210

The landlord appeals the determination that a rent increase is not warranted pursuant to Costa-Hawkins or Rules Sections 6.14 and 1.21.

I. 1624 Sacramento #3

AL070209

The landlord appeals the decision finding a rent increase unlawful because it was determined that the subject unit is still the tenant's principal place of residence.

- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

- IX. New Business
- X. Calendar Items
- XI. Adjournment





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**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

Tuesday, January 8, 2008 at 6:30 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

I. Call to Order

President Gruber called the meeting to order at 6:35 p.m.

II. Roll Call

Commissioners Present: Beard; Gruber; Henderson; Hurley;  
Justman; Marshall; Mosbrucker; Mosser.  
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:50 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of December 11, 2007.  
(Hurley/Henderson: 5-0)

IV. Remarks from the Public

A. Landlord Arthur Minassian of 1393 – 27<sup>th</sup> Ave. #2 (AL070205) told the Board that the comments by the Administrative Law Judge in her response memo regarding his case did not reflect the comparables petition that he submitted.

B. Tenant Carl Ricitelli of 350 Laguna Honda (AT070207) said that the building still doesn't have heat and that he gave sworn testimony regarding this at the hearing. Mr. Ricitelli felt as through the Administrative Law Judge was calling him a liar.

C. Attorney Wesley Wakeford spoke on behalf of his client, tenant Julia Nelson of 3531 – 21<sup>st</sup> St. (AT070208). Mr. Wakeford asked that the Board permit the tenant's untimely appeal because, at the time the decision was issued, the tenant did not have the resources nor understand how to pursue an appeal. Mr.

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Wakeford said that the decision is still having repercussions today as the amount of the rent increase makes the unit prohibitively expensive and the tenant can't get a roommate. Mr. Wakeford expressed his belief that the financial hardship of a prior tenant should not cause the tenant's rent to go up beyond the amount specified in her lease.

D. Attorney Clifford Fried spoke on behalf of the landlord in the case at 1550 Fell, Unit B (AL070204). Mr. Fried said that there was no opposition by the tenants to the rescission of the Ellis notice, and that the only opposition was coming from the Rent Board. Mr. Fried maintained that a note in the file regarding a conversation between the tenant and a Rent Board staff member cannot be considered evidence because it is not sworn testimony and was not introduced by the landlord or the tenant. Mr. Fried asked that the Board reverse the decision, which he believes is "unconstitutional."

E. Tenant Rachael Meyer of 1624 Sacramento #3 (AL070209) told the Board that the subject unit is her roommate's principal place of residence although she is a member of a "non-traditional family." Ms. Meyer said that the landlord's proposed rent increase presents a financial hardship, that the landlord's evidence was illegitimate "hearsay," and that the landlord is motivated by profit in a hot rental market.

F. Attorney Steve Williams spoke on behalf of the landlord at 1624 Sacramento. Mr. Williams said that this is not a hardship case, as the tenant owns her own property, and that she has been getting tax advantages and then claiming ignorance. Mr. Williams told the Board that the tenant testified falsely on several points at the hearing and that they shouldn't "countenance deception." Mr. Williams asked that the Board overturn the decision.

G. Landlord Mary Creigher of 3531 – 21<sup>st</sup> St. said that the landlords reduced the rent because the original tenant was suffering a hardship. Ms. Creigher told the Board that the appeal procedure was explained orally at the hearing and is also in the decision. It is now two years later and the decision is being appealed.

#### V. Consideration of Appeals

A. 811 Gonzalez Dr.

AT070218

The tenant's appeal was filed approximately eight months late because of the illness and subsequent death of the tenant's husband and consequent legal matters.





MSC: To find good cause for the late filing of the appeal.  
(Marshall/Henderson: 5-0)

The landlord's petition for rent increases based on increased operating expenses in this multi-unit complex was granted. One tenant appeals the retroactive amounts owed on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Gruber: 5-0)

B. 570 O'Farrell #119

AT070215

The landlord's petition for approval of utility passthroughs for 14 of 38 units was granted. The tenant in one unit appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Henderson/Marshall: 5-0)

C. 25 Madrone Ave.

AT070206

The tenant's appeal was filed over three weeks late because the tenant was out of the country at the time the decision was issued.

MSC: To find good cause for the late filing of the appeal.  
(Henderson/Marshall: 5-0)

The tenant's petition alleging substantial decreases in housing services was denied because the Administrative Law Judge found that the problems were not substantial or that the landlord remedied them soon after receiving notice from the tenant. The tenant appeals, asserting that: the landlord lied at the hearing; the landlord and his wife do not have experience in property management; there are many habitability problems on the premises; one of the reputed owners is not listed in the records at City Hall; and the landlord has discriminated against him.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

D. 1550 Fell St., Unit B

AL070204

The landlord's request for rescission of a Notice of Intent to Withdraw Residential Units from the Rental Market was denied because the ALJ found that the landlord failed to prove that no tenant vacated the subject unit as a result of the landlord's Ellis filing, nor that any extraordinary circumstances exist to justify rescission. On appeal, the landlord argues that: the tenants had decided to vacate the premises



prior to the issuance of the Ellis notices, but had not disclosed this to the owner; the decision was based on an ex parte communication between one of the tenants and a staff member at the Rent Board, which did not allow for cross-examination or rebuttal by the landlord; the ALJ ignored the uncontroverted evidence that was presented by the landlord; no tenant vacated the unit because of the Ellis filing; and the landlord's due process rights were violated, as were Sections 11.17(a) and (b) of the Board's Rules and Regulations.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing on the issue of the tenant's motivation in vacating the unit. (Marshall/Justman: 4-1; Henderson dissenting)

E. 1393 – 27<sup>th</sup> Ave. #2

AL070205

The landlord's petition for a rent increase based on comparable rents was denied because the Administrative Law Judge (ALJ) found that the initial rent had not been set very low, even though there was a special relationship between the parties. On appeal, the landlord claims that: the rental ads he submitted showed that comparable units rented for an average of \$324 more per month than the subject unit; the ALJ should have made the tenant prove his contention that the initial rent was set at close to market; and the rent having been set 18.8% lower than the average comparable rent constituted a significant disparity.

MSC: To deny the appeal. (Marshall/Henderson: 3-2; Gruber, Murphy dissenting)

F. 350 Laguna Honda Blvd. #3

AT070207

The landlords' petition for 7% rent increases to 2 of 12 units based on increased operating expenses was granted. The tenant in one unit appeals the decision, claiming that there is not adequate heat in the building, although the tenants failed to provide proof of this at the hearing.

MSC: To deny the appeal without prejudice to the tenant filing a tenant petition on the grounds of decreased housing services for the alleged lack of heat. (Gruber/Murphy: 5-0)

G. 3531 – 21<sup>st</sup> St.

AT070208

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that the rent had been temporarily discounted due to the financial difficulties of a prior tenant. The tenant appeals, maintaining that: when she



moved in to the unit, she was not informed that the rent had been temporarily reduced; she has a valid lease with the landlords at the reduced base rent amount; it is more likely that the rent was reduced due to market conditions; the rent is again being increased, resulting in an \$825 monthly rent increase since August of 2004; and the rent is more than comparable units of nicer quality. The tenant's appeal was filed almost two years late because of work commitments at the time the decision was issued.

MSC: To find no good cause for the untimely filing of the appeal. The decision is therefore final. (Murphy/Gruber: 5-0)

H. 3280 – 17<sup>th</sup> St.

AL070210

The landlord's petition for a determination pursuant to Rules Sections 1.21 and 6.14 and Costa-Hawkins was denied because the ALJ found that the subject unit is the tenant's principal place of residence. On appeal, the landlord maintains that: the tenant takes a Homeowner's Exemption on a property he purchased in Richmond, California and represented to various government agencies that the Richmond property is his principal place of residence; the tenant's testimony cannot be found credible considering these misrepresentations; the record was left open for the tenant to produce evidence he failed to provide; the utility bills for the subject unit are inconsistent with full-time residential use; and the tenant's credit card bills show that he purchases gasoline in proximity to the Richmond address.

MSC: To deny the appeal. (Marshall/Henderson: 4-1; Gruber dissenting)

I. 1624 Sacramento #3

AL070209

The tenants' petition alleging an unlawful rent increase from \$2,084.80 to \$3,550.00 was granted because the ALJ found that the original tenant still permanently resides in the unit, even though she spends weekends in Greenbrae at a house she owns with her husband. The landlord appeals, arguing that: the tenant filed for a homeowner's tax exemption two years after purchasing the home, demonstrating that she did not mistakenly request this benefit while signing voluminous documents at the time of purchase; a neighbor spoke of seeing the tenant at the Greenbrae residence "a lot," while the landlord's agent rarely saw her at the subject unit prior to the filing of the petition; the tenant uses the Greenbrae address for certain bank accounts, car registration and insurance; the tenant perjured herself at the hearing; and the tenant is making a profit off of the subject unit.





MSC: To recuse Commissioner Beard from consideration of this appeal. (Justman/Marshall: 5-0)

MSC: To deny the appeal. (Marshall/Henderson: 4-1; Gruber dissenting)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received an article from SFGate regarding the eviction of Bianca Jagger from her New York apartment because it was found not to be her principal place of residence.

#### VII. Director's Report

Executive Director Wolf briefly discussed the Mayor's Inauguration and a goodbye dinner for Commissioner Becker with the Board.

#### IV. Remarks from the Public (cont.)

H. Attorney Clifford Fried expressed his opinion that the issue regarding the note from staff in the file is one of weight, not admissibility, and that the agreement between the landlord and the tenant is presumptive, pursuant to the Evidence Code. Mr. Fried said that the Rent Board's Ellis Act procedures aren't in writing, which is problematic for the public. He informed the Board that their policy regarding rescissions of Ellis notices says that tenancies must not be terminated, not that the tenant didn't move out. He also expressed his opinion that staff shouldn't be calling the parties and investigating these cases.

I. Landlord Arthur Minassian told the Board that the ALJ didn't properly consider the evidence he submitted. He said that all of his comparables were within 14 blocks of the subject unit, which is the same general area. He reminded the Board that perfect comparability isn't required and said that the ALJ ruled in favor of the tenant's argument, without any evidence. Mr. Minassian believes that the decision is unfair, that \$230.00 per month is a significant sum and that he did not do a "poor job" of putting together his petition.

#### VIII. Calendar Items

January 15, 2008 - NO MEETING

January 22, 2008  
7 appeals



New Business: Standard for Rescinding Ellis/OMI Notices of Constraints  
and the Role of Rent Board Staff in Processing Requests for Rescission  
and Other Petitions

IX. Adjournment

President Gruber adjourned the meeting at 8:15 p.m.







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LARRY BEACH BECKER  
VICE-PRESIDENT

NOTICE OF THE REGULAR MEETING OF  
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DELENE WOLF  
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Tuesday, 6:00 p.m.,  
January 22, 2008  
25 Van Ness Avenue, #70, Lower Level

AGENDA

DEPOSITORY ITEM  
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JIM HURLEY

ANTHONY JUSTMAN

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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

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- V. Consideration of Appeals

A. 633 Cabrillo AT070214

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

B. 2360 Van Ness #11 & #8 AT070221 & -22  
AT080002 & -03

Two tenants appeal decisions granting certification of capital improvements costs and approving rent increases based on increased operating expenses on the grounds of financial hardship.

C. 214 A Bonview AT070212

The tenant appeals the decision denying a claim of unlawful rent increase.

D. 150 Font Blvd. #7-E AT070213

The tenant appeals the decision finding that the rent increase was lawful pursuant to Costa-Hawkins.



E. 550 Battery #1409

AT070217

One tenant appeals the decision approving utility passthroughs.

F. 845 Bosworth

AL070216 & AT070219

The landlord and tenant both appeal the decision partially granting claims of decreased housing services.

G. 3640 – 16<sup>th</sup> St.

AL070220

The landlord appeals the decision granting claims of decreased housing services and unlawful rent increase.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

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IX. New Business

Standards for Rescinding Ellis/OMI Notices of Constraints and the Role of Rent Board Staff in Processing Requests for Rescission and Other Petitions

X. Calendar Items

XI. Adjournment





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Tuesday, January 22, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

I. Call to Order

President Gruber called the meeting to order at 6:09 p.m.

II. Roll Call

Commissioners Present: Beard; Gruber; Henderson; Hurley;  
Justman; Marshall; Mosser.  
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:15 p.m.; Commissioner Mosbrucker arrived at the meeting at 6:30 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of January 8, 2008.  
(Hurley/Henderson: 5-0)

IV. Remarks from the Public

A. Dave Burnett said that he has been a tenant in the Golden Gateway complex for over thirty years. Mr. Burnett believes that after rent control was first enacted, there were dramatic increases in utility costs, but that a comparison between 1980 and 2006 "no longer makes sense." Mr. Burnett feels that tenants are being charged for inflation because there is no indexing of base year costs for utility passthroughs. Mr. Burnett said that rents have gone up at about the same rate as utilities.

B. Golden Gateway tenant Paul Ledyard passed out a handout comparing utility passthroughs, monthly rents, and the landlord's utility costs. Mr. Ledyard said that he has paid the landlord \$15,000 in rent over the cost of utilities. Although he doesn't mind paying his pro rata share, Mr. Ledyard believes that he has paid \$10,000 more than his fair share.

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C. Golden Gateway tenant Bobby Coleman remarked on the "inequity" of unbundling the energy cost component of the CPI. Mr. Coleman said that this has an onerous impact on tenants, and that he came before the Board to "exhaust his administrative remedies." Mr. Coleman appeared in support of tenant Brian Browne's appeal (AT070217).

D. Jim Faye appeared on behalf of the tenant at 150 Font (AT070213). Mr. Faye told the Board that after his client's mother gave notice that her daughter was moving in, the landlord failed to give a 6.14 notice or reserve the right to increase the rent at a later time. Mr. Faye believes that the landlord waived their rights to a rent increase because they knew his client was there and thereafter accepted rent. Mr. Faye explained that Rules §6.14 confuses tenants, who think they're in the clear if the landlord hasn't served them with a 6.14 notice. Mr. Faye asked that the Board delete §6.14, or amend it for clarity.

E. Constance Reeder, the tenant at 150 Font, told the Commissioners that she gave notice and moved out of the unit on January 8<sup>th</sup>. Ms. Reeder lost her job in October and is now in training at a new job. She told the Board that it would be a huge financial burden if she had to pay the retroactive amounts she owes.

F. Golden Gateway tenant Bill Hannon spoke in support of Brian Browne's appeal. Mr. Hannon said that the landlord wants to use the 1980 base year, while Mr. Browne wants them to use 2005. Mr. Hannon suggested that the Board consider an equitable compromise and "balance the unhappiness."

G. Golden Gateway tenant Brian Browne spoke in support of his appeal (AT070217). He told the Board that he has "done the math" and that the landlord's rent increases and power increases match. He said that the same amount of power is being consumed except that the common area costs are much less. Mr. Browne believes that \$30,000 is owed to him by the landlord and that subtracting a 1980 bill from a 2006 bill is "nonsensical," and a "regressive tax on aging." Mr. Browne also feels that the regulation cannot override his lease.

H. Golden Gateway tenant George Eddick said that he agrees with the previous speakers. He feels that the landlord is trying to accomplish with utility passthroughs what they cannot accomplish through annual rent increases.

I. Golden Gateway tenant Ernestine Weiss said that the landlord is a "slumlord." Ms. Weiss is upset about the corporate rentals at the complex and "hotelization." Ms. Weiss feels it is "highway robbery" to compare 1986 rents to later years, and that fixed income tenants can't bear it. Ms. Weiss also maintains that "double-dipping" is illegal.



J. Golden Gateway tenant Regina Macias alleged that the Golden Gateway Center is charging tenants for electricity used in construction projects that are being undertaken. Ms. Macias maintained that the landlord hasn't done anything except for the provision of new curtains; she gets rent increases and expects something in return.

K. Landlord Joe Sutton spoke concerning the hardship appeals at 2360 Van Ness (AT070221 & -22). Mr. Sutton has no problem with Ana Gonzalez' appeal, but believes that tenant Nancy Berry's Hardship Application is incomplete because her expenses are greater than her income.

L. Golden Gateway tenant Natalie Jones said that she supports Brian Browne in his battle over these "unjust charges." Ms. Jones maintained that the landlord has done nothing to improve the surroundings and provides unsightly second-hand appliances.

M. Golden Gateway tenant Bridgette Boylan said that she is appalled at the amount of the utility passthroughs for long-term tenants. Ms. Boylan believes that this is a ploy to get rid of the older tenants.

V. Consideration of Appeals

A. 633 Cabrillo

AT070214

The landlord's petition for certification of the costs of a new roof to 3 of 5 units was granted, resulting in a monthly passthrough in the amount of \$73.30. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Henderson/Marshall: 5-0)

B. 2360 Van Ness #11 & #8

AT070221 & -22

AT080002 & -03

The landlord's petition for capital improvement passthroughs and rent increases based on increased operating expenses to 16 of 20 units was granted. Two tenants appeal the decisions on the grounds of financial hardship.

MSC: To accept the appeals of the tenant in unit #11 and remand the cases for a hearing on the tenant's claim of financial hardship. (Marshall/Henderson: 5-0)



MSC: To accept the appeals of the tenant in unit #8 and remand the cases for a hearing on the tenant's claim of financial hardship. (Marshall/Henderson)

C. 214 A Bonview

AT070212

The tenant's petition alleging an unlawful rent increase was denied. The tenant appeals, claiming that: at the Mediation session, the Administrative Law Judge indicated that he found the tenant's evidence credible; and the landlady had no proof that the tenant's rent had not been raised from \$380.00 to \$500.00.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

D. 150 Font Blvd. #7-E

AT070213

The tenant's petition alleging an unlawful increase in rent from \$951.88 to \$2,005.00 was denied because the Administrative Law Judge found that the rent increase was authorized by Costa-Hawkins. On appeal, the tenant maintains that: the landlord waived its right to increase the rent under Costa-Hawkins; Rules §6.14 should be deleted or amended if it is preempted by Costa-Hawkins; the legal force and effect of the "Notice to all persons in residence" and "Application for Lease Renewal" need to be determined; and the 6.14 notice issued by the landlord was untimely served.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing to ascertain whether the appellant was a tenant or a subtenant at the time the notice of rent increase was served; whether a direct landlord-tenant relationship was established; and/or whether a rent increase pursuant to Rules §6.14 was warranted due to the timely service of a 6.14 notice. (Murphy/Marshall: 4-1; Gruber dissenting)

E. 550 Battery #1409

AT070217

The landlord's petition for approval of utility passthroughs for 69 of 794 units was granted. One tenant appeals the decision, asserting that: there is no valid policy reason for Rules §6.16 to exist, as utilities were included in the tenant's initial base rent; the tenant's rent has increased at the same rate as the landlord's utility costs; the utility costs for the laundry room/health club are less than in 1980 when indexed for inflation; the tenant's lease should be controlling regarding the payment of utilities; revenues received by the landlord from vendors should be factored in; and Rules §6.16 represents a regressive tax on aging for long-term tenants.



After discussion, it was the consensus of the Board to continue consideration of this appeal to the next meeting.

F. 845 Bosworth

AL070216 & AT070219

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,651.50 due to habitability defects on the premises. The landlord and tenant both appeal the decision. The landlord asks that the amount of \$2,194.38, which he has already paid to the tenant, be offset to mitigate the amount that he owes. On appeal, the tenant provides additional evidence and claims that: three light bulbs needed to be replaced, as opposed to one; the heater is still unreliable; the rent reductions should commence at an earlier date; the landlord had constructive notice as to the lack of lights at the entrances to the building; and the landlord has harassed her and invaded her privacy.

MSC: To deny both appeals; no determination is made as to the validity of any non-Rent Board claims. (Marshall/Justman: 5-0)

G. 3640 – 16<sup>th</sup> St.

AL070220

The tenant's petition alleging decreased housing services and unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$1,230.32 for rent overpayments and \$1,551.00 for loss of storage space and limited access to the garage. On appeal, the landlord claims that the storage room was provided after the inception of the tenancy for no additional consideration; and the original agreement did not include unshared access to the garage and the tenant has been provided access upon request.

MSC: To deny the appeal. (Marshall/Henderson: 4-1; Gruber dissenting)

## VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received an article from SFGate regarding the increase in Bay Area rents.

## VII. Director's Report

Executive Director Wolf reported as follows:

A. She appeared before the SRO Hotel Visitor Policy Task Force to inform them about this year's amendments to the Visitor Policy. The Task Force





members commended the Rent Board Commissioners for their good work in administering the Policy. Ms. Wolf and a Deputy City Attorney also attended a Settlement Conference in conjunction with a tenant's Federal Court challenge to the Visitor Policy.

B. The annual Sunshine and Ethics training for City officials will be held on Monday, March 3<sup>rd</sup> at Herbst Theatre from 6:00 to 8:00 p.m.

C. Ms. Wolf proudly announced the promotion of Rent Board Supervisor Robert Collins to the position of Deputy Director. Mr. Collins will appear at a Board meeting in the near future.

D. She briefly discussed plans for a gift and farewell dinner for ex-Commissioner Larry Becker after the March 4<sup>th</sup> Board meeting.

#### IV. Remarks from the Public (cont.)

N. Ernestine Weiss said that Golden Gateway's utility passthroughs are unreasonable whether the tenant can afford it or not, and that the landlord shouldn't be able to breach a contract. Ms. Weiss believes that the landlord is "making a fortune," while the hardship appeals process itself constitutes a hardship.

O. Regina Macias said that the law should apply equally to everyone, rich or poor, and that she had to move in with friends because the conditions in the complex were "unlivable."

P. Brian Browne said he moved in to the Golden Gateway complex when it was under HUD jurisdiction, and admitted that he "lucked out." Mr. Browne maintained that the landlord knew about the existing contracts when they purchased the buildings, and can't "unbundle" utilities since they are a component of the CPI.

#### VIII. New Business

##### Standards for Rescinding Ellis/OMI Notices of Constraints and the Role of Rent Board Staff in Processing Requests for Rescission and Other Petitions

The Board discussed the standard to be applied to landlord requests to rescind OMI/Ellis eviction notices. At their May 1, 2001 meeting, the Commissioners unanimously adopted a policy that, in order to rescind an Ellis eviction notice, an owner must prove that none of the existing tenancies was terminated as a result of the Ellis filing or show extraordinary circumstances. However, landlords



sometimes argue that the tenants did not move as the result of the Ellis filing but, rather, for some other reason. Proper application of the standard is unclear in such situations. Is it sufficient to deny a request for rescission if the Ellis/OMI eviction notice is a link in the chain of events that led the tenant to vacate the unit? Or must the Ellis/OMI notice play a greater causal role in the tenant's vacation of the unit, e.g. be 50% or more responsible for the move-out? The Board discussed possible ways to clarify the standard, including a bright-line standard based on whether the tenant in fact vacated after service of the eviction notice. Such a bright-line standard would avoid the difficult issue of determining the precise causal relationship between the eviction notice and the tenant vacating the unit, and would also eliminate the need for staff investigation or proof at a hearing regarding the "real" reason the tenant vacated the unit. Commissioner Justman wondered if the Board needed to enumerate what constitutes "extraordinary circumstances" and several Commissioners expressed a desire for there to be an opportunity for public input. The Board continued discussion of this issue to the next meeting.

IX. Calendar Items

January 29<sup>th</sup> and February 5<sup>th</sup>, 2008 - NO MEETINGS

**6:30** February 12, 2008

6 appeal considerations

Old Business: Standards for Rescission of Ellis/OMI Notices

New Business: Departmental Budget

X. Adjournment

President Gruber adjourned the meeting at 8:17 p.m.





DAVID GRUBER  
PRESIDENT

LARRY BEACH BECKER  
VICE-PRESIDENT

**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

Tuesday, **6:30 p.m.**,  
February 12, 2008

25 Van Ness Avenue, #70, Lower Level

**AGENDA**

DEBORAH HENDERSON

JIM HURLEY

ANTHONY JUSTMAN

POLLY MARSHALL

CATHY MOSBRUCKER

NEVEO MOSSER

BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 725 Ellis #609

AT070225

One tenant appeals the decision approving utility passthroughs on the grounds of financial hardship.

B. 660 O'Farrell, Apt. 21

AT080001

One tenant appeals the decision approving utility passthroughs, disputing the number of rooms in her unit.

C. 96 Toledo Way, No. 305

AT080004

The tenants appeal the decision finding that there is no "Tenant in Occupancy" in the unit pursuant to Rules §1.21.

D. 866 Capp St.

AL070223

The landlord appeals the decision denying certification of the costs of replacement of the rear stairs because a Notice of Violation was issued more than 90 days prior to commencement of the work.



E. 3330 Pierce St.

AL080005

The landlord appeals the denial of a petition for rent increases due to increased operating expenses based on debt service as a result of refinancing.

F. 550 Battery #1409

AT070217

One tenant appeals the decision approving utility passthroughs, questioning the justification for Rules §6.16.

VI. Communications

VII. Director's Report

VIII. Old Business

Standards for Rescinding Ellis/OMI Notices of Constraints and the Role of Rent Board Staff in Processing Requests for Rescission and Other Petitions

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

Departmental Budget

X. Calendar Items

XI. Adjournment







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### Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlet Place, Room 244, San Francisco, CA 94102 at 554-7724.





DAVID GRUBER  
PRESIDENT

LARRY BEACH BECKER  
VICE-PRESIDENT

DEBORAH HENDERSON  
JIM HURLEY  
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POLLY MARSHALL  
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BARTHOLOMEW MURPHY

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

Tuesday, February 12, 2008 at 6:30 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

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I. Call to Order

President Gruber called the meeting to order at 6:35 p.m.

II. Roll Call

Commissioners Present: Beard; Gruber; Henderson; Hurley;  
Marshall; Mosbrucker; Murphy.  
Commissioners not Present: Justman.  
Staff Present: Lee; Wolf.

Commissioner Mosser appeared on the record at 6:39 p.m. and left the meeting at 8:16 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of January 22, 2008.  
(Henderson/Gruber: 5-0)

IV. Remarks from the Public

A. Dave Burnette, a tenant at the Golden Gateway Center, distributed a chart comparing the rate of annual increases with increases in the cost of utilities. Mr. Burnette took a rent of \$1.00 and applied the annual allowable increases since 1980; he found that the rent went up 2.58 times while the utility costs went up 2.57 times. Mr. Burnette therefore concludes that there is no reason for a utility passthrough.

B. Greg Blaine, the landlord in the case at 3330 Pierce St. (AL080005), told the Board that Rules and Regulations §6.10(g) says that loan proceeds must be reinvested in the building. However, Mr. Blaine explained that no additional funds were borrowed over Year One in Year Two; his loan amount stayed the same, and only the interest increased. Mr. Blaine cited §6.10(a), which says that



a landlord can get a rent increase if the cost of servicing the debt has increased. Mr. Blaine believes that this is the same as the cost of insurance or garbage going up, that the Administrative Law Judge erred, and that the decision denying him an increase based on increased operating expenses should be reversed.

C. Tenant Brian Browne of 550 Battery #1409 (AT070217) said that he has "methodically documented" the same conclusions as the first speaker, Mr. Burnette. Mr. Browne looked at the cost of power in 1980 and 2006 and said that no increase is justified, especially as he believes the cost of utilities are embedded in base rent. Mr. Browne told the Board that "many tenants are hurt by this" but don't want to file hardship appeals.

D. Tenant Ernestine Weiss of Golden Gateway said that she moved in with a lease that said that utilities are included and that utility passthroughs are in violation of that contract. Mr. Weiss believes that "Highway Robbery" is being committed, and that it is the Commissioners' responsibility to do their homework and correct these wrongs.

E. Tenant Paul Ledyard of Golden Gateway expressed his opinion that all the Board has to worry about is if the base rents are sufficient to pay the landlord's power costs. Mr. Ledyard believes it is irrelevant whether the landlord is good or bad, the tenants pay more or less than market rents, or if the tenants are rich or poor.

F. Robert Collins, the newly appointed Deputy Director of the agency, addressed the Board and told them he appreciated the opportunity to serve the public. Mr. Collins has worked for the Rent Board for over ten years and is committed to finding better and more efficient ways to serve the agency's clients.

V. Consideration of Appeals

A. 725 Ellis #609

AT070225

The landlord's petition for approval of utility passthroughs for 14 of 53 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Henderson: 5-0)

B. 660 O'Farrell, Apt. 21

AT080001

The landlord's petition for approval of utility passthroughs for 5 of 35 units was granted. One tenant appeals the decision, asserting that she lives in a one room, rather than a three room, unit.



MSC: To accept the appeal and remand the case to the Administrative Law Judge for a Technical Correction regarding the number of rooms in the unit, if appropriate; a hearing will be held only if necessary. (Henderson/Murphy: 5-0)

C. 96 Toledo Way, No. 305

AT080004

The landlord's petition for a determination pursuant to Rules §1.21 was granted as the Administrative Law Judge found that neither occupant resided in the unit as their principal place of residence. The tenants appeal, claiming that: all of the documentary evidence establishes that the tenant occupies the subject unit as his principal place of residence; there are factual errors in the decision; the tenant does not take a Homeowner's Exemption on a condominium he jointly owns; the other tenant in the unit was not named in the petition nor served with a copy, which constitutes a denial of due process; it is not necessary for an individual to sleep somewhere to be considered to reside there; the ALJ abused his discretion and the decision fails the substantial evidence test; the rent increase is to take effect prior to the tenant's anniversary date; and a petition for rent increase has not been filed.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for a Technical Correction to delete the name of the other tenant in the unit from the caption. (Murphy/Gruber: 5-0)

D. 866 Capp St.

AL070223

The landlord's petition for certification of the costs of a new roof to 2 of 3 units was granted. However, certification of the costs of replacement of the rear stairs on the property was denied because the Administrative Law Judge found that the landlord had not exercised timely good faith efforts to abate a Notice of Violation that had been issued more than 90 days prior to commencement of the work. On appeal, the landlord argues that: the Income Beneficiary of the Trust did not have the funds to pay the cost of the work, and needed the cooperation of the Remainderman Beneficiary; the Trustee did not have the power to borrow money or offer the building to secure a loan; the purpose of the 90-day rule is to ensure that landlords do not neglect their properties, but the Trustee was attempting to effectuate repairs prior to the issuance of the NOV; the circumstances of this case should form an exception to the 90-day rule; and the foundation work was not covered by the NOV and should be certified.

MSC: To deny the appeal. (Henderson/Marshall: 3-2; Beard, Murphy dissenting)





E. 3330 Pierce St.

AL080005

The landlord's petition for rent increases to 12 of 21 units based on increased operating expenses was denied because the increase was based on debt service due to refinancing and the funds were not reinvested in the building. On appeal, the landlord argues that the Administrative Law Judge erred in disallowing the increase in debt service from Year 1 to Year 2 due to a refinance in an unrelated prior year.

MSC: To deny the appeal. (Marshall/Henderson: 5-0)

F. 550 Battery #1409

AT070217  
(cont. from 1/22/08)

The landlord's petition for approval of utility passthroughs for 69 of 794 units was granted. One tenant appeals the decision, asserting that: there is no valid policy reason for Rules §6.16 to exist, as utilities were included in the tenant's initial base rent; the tenant's rent has increased at the same rate as the landlord's utility costs; the utility costs for the laundry room/health club are less than in 1980 when indexed for inflation; the tenant's lease should be controlling regarding the payment of utilities; revenues received by the landlord from vendors should be factored in; and Rules §6.16 represents a regressive tax on aging for long-term tenants.

MSC: To deny the appeal. (Murphy/Gruber: 3-2; Marshall, Henderson dissenting)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. Form 700 Statement of Economic Interests.

B. Several newspaper articles from the S.F. Chronicle and an update regarding AB 976.

#### VII. Director's Report

Senior Administrative Law Judge Tim Lee told the Board about the unpublished decision in the case of Prana Nine Properties, LLC v. Ye (First District Court of Appeal No. A116673), issued on November 20, 2007, where the court held that the landlord's action for declaratory relief concerning a Costa-Hawkins rent increase was properly dismissed due to the availability of adequate alternative



relief at the Rent Board. Mr. Lee also reported that there has been a settlement in the case at 150 Font Blvd. #7-E (AT070213), which was remanded for further hearing at the Board meeting on January 22<sup>nd</sup>. Executive Director Wolf let the Commissioners know that the competing eminent domain initiative sponsored by the League of Cities/League of Conservation Voters has qualified for the June 2008 ballot. Unlike the broader Jarvis measure, it deals only with eminent domain and imposing restrictions on the taking of owner-occupied single-family homes, and would not repeal rent control. Ms. Wolf also informed the Board that their Form 700 Statements of Economic Interests are due to the Ethics Commission by April 1, 2008.

#### VIII. Old Business

Standards for Rescinding Ellis/OMI Notices of Constraints and the Role of Rent Board Staff in Processing Requests for Rescission and Other Petitions

The Board continued their discussion of the standards to be applied to landlord requests to rescind OMI/Ellis eviction notices. At the January 22<sup>nd</sup> meeting, the Board considered clarifying the standard, including adopting a bright-line rule based on whether the tenant in fact vacated after service of the eviction notice. A Memorandum prepared by Senior Administrative Law Judge Tim Lee was sent to the parties in two cases with pending rescission requests, advising them that the Rent Board would be considering clarifying the standard at tonight's meeting, and inviting them to submit comments for the Board's consideration. No remarks were submitted.

The Board's discussion centered on the issue of the timing of the clarification in light of the pending cases: Commissioner Murphy stated that he "didn't want to change the rules in mid-stream," while Commissioner Marshall opined that the Board would be clarifying, rather than changing, the standard. The Board then failed to pass the following motion:

MSF: To adopt the proposed clarification to the Board's standard for rescission of Ellis/OMI Notices of Constraints.  
(Henderson/Marshall: 2-3; Beard, Gruber, Murphy dissenting)

The Board agreed to continue discussion of this issue to the next meeting.

#### IV. Remarks from the Public (cont.)

G. Golden Gateway tenant Brian Browne told the Commissioners that they don't understand economics, and that there are "winners and losers in market exchanges." Mr. Browne feels that the landlord knew the rules going in, and is



now trying to change them, whereas the tenants are abiding by the contract. Mr. Browne also alleged that the tenants are paying for utilities for garage spaces, which aren't lit.

H. Golden Gateway tenant Mary Pecci was paying \$186 when she moved in to the complex; she is now paying \$800, and new tenants are paying \$1,800. Ms. Pecci believes that these sums should cover the landlord's expenses, and more.

I. Golden Gateway tenant Ernestine Weiss reminded the Board that they "make the rules" and are supposed to protect tenants. She also said that Golden Gateway is not a poor landlord and that they should be restrained because "thou shalt not break a contract." Ms. Weiss asked that the Board review Golden Gateway's profit statement.

J. Golden Gateway tenant Paul Ledyard said that a utility passthrough is for the costs of power, and is not supposed to cover rent increases. Mr. Ledyard feels that the landlord should lobby for additional rent increases if those in effect are insufficient and that it is not right to have one unfair rule because there is another unfair rule in effect.

K. Golden Gateway tenant Natalie Jones said that the Minutes from the last meeting are incorrect because she spoke about appliances that broke down and were not replaced in "first class condition," but did not mention anything about the complex's surroundings. Ms. Jones told the Board that the outside has been improved a great deal at the expense of the tenants, who are still paying the passthrough. Ms. Jones said that the Board misunderstands who lives in Golden Gateway, because many tenants moved in when the property was under HUD jurisdiction and those tenants are now on fixed incomes.

L. Golden Gateway tenant Regina Macias addressed the issue of the room count, and said that she just uses the garage to park her car.

M. Landlord Greg Blaine asked for clarification as to whether the landlord can get a rent increase if, after the original acquisition loan, down the road the loan amount stays the same and just the interest goes up. He also asked if the landlord has to wait to reapply if some of the loan proceeds went towards capital improvements.

#### IX. New Business

##### Departmental Budget

Ms. Wolf briefly went over the departmental budget for Fiscal Year '08-'09.



MSC: To approve the proposed departmental budget for Fiscal Year '08-'09. (Marshall/Murphy: 5-0)

X. Calendar Items

February 19<sup>th</sup> and 26<sup>th</sup>, 2008 - NO MEETINGS

March 4, 2008

4 appeal considerations (1 cont. from 11/13/07)

Old Business: Standards for Ellis/OMI Rescissions

XI. Adjournment

President Gruber adjourned the meeting at 8:25 p.m.







**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

DAVID GRUBER  
PRESIDENT

LARRY BEACH BECKER  
VICE-PRESIDENT

Tuesday, 6:00 p.m.,

March 4, 2008

25 Van Ness Avenue, #70, Lower Level

**AGENDA**

DEBORAH HENDERSON

JIM HURLEY

ANTHONY JUSTMAN

POLLY MARSHALL

CATHY MOSBRUCKER

NEVEO MOSSER

BARTHOLOMEW MURPHY

I. Call to Order

II. Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

V. Consideration of Appeals

A. 1408 California #408

AT080008

One tenant appeals the decision approving utility passthroughs on the grounds of financial hardship.

B. 1200 Washington #10

AL080007

The landlord appeals the decision determining that the subject unit is the tenant's principal place of residence pursuant to Rules §1.21.

C. 798 Utah

AL080006

The landlord appeals the decision determining that no rent increase is warranted pursuant to Costa-Hawkins.

D. 2502 Cabrillo

AL070191

(cont. from 11/13/07)

The landlord appeals the determination that the tenant is a "Tenant in Occupancy" pursuant to Rules §1.21.

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VI. Communications

VII. Director's Report

VIII. Old Business

Standards for Rescinding Ellis/OMI Notices of Constraints and the Role of Rent Board Staff in Processing Requests for Rescission and Other Petitions

IV. Remarks from the Public (cont.)

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IX. New Business

X. Calendar Items

XI. Adjournment





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DAVID GRUBER  
PRESIDENT

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

Tuesday, March 4, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSE  
BARTHOLOMEW MURPHY

**I. Call to Order**

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President Gruber called the meeting to order at 6:05 p.m.

MAR 31 2008

**II. Roll Call**

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Commissioners Present: Beard; Gruber; Henderson; Hurley;  
Mosbrucker.  
Commissioners not Present: Marshall.  
Staff Present: Lee; Wolf.

Commissioner Justman appeared on the record at 6:07 p.m.; Commissioner Mosser arrived at the meeting at 6:10 p.m.; and Commissioner Murphy appeared at 6:20 p.m.

**III. Approval of the Minutes**

MSC: To approve the Minutes of February 12, 2008.  
(Hurley/Henderson: 5-0)

**IV. Remarks from the Public**

A. Tenant Jesse Ely informed the Board that the property address for his case (AL080006) is 498 Utah, instead of 798, as incorrectly stated on the Agenda.

**V. Consideration of Appeals**

A. 1408 California #408

AT080008

The landlord's petition for approval of utility passthroughs for 20 of 37 units was approved. One tenant appeals the decision on the grounds of financial hardship.





MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship.  
(Mosbrucker/Henderson: 5-0)

B. 1200 Washington #10

AL080007

The landlord's petition for a determination pursuant to Rules §1.21 was denied because the Administrative Law Judge found that the subject unit is the tenant's principal place of residence. On appeal, the landlord argues that: the tenant failed to submit requested and essential evidence; the tenant made a misrepresentation at the hearing, which should call her credibility into question; most of the tenant's evidence consisted of her personal opinion; the landlord proved her case by a preponderance of the evidence, which is the proper standard; the burden of proof should have shifted to the tenant to justify her absence from the unit a majority of the time; and the subject unit is the tenant's second home, which does not constitute a principal place of residence.

Prior to the meeting, the landlord's representative submitted a request to postpone consideration of this case for one month, due to new evidence having become available.

MSC: To recuse Commissioner Beard from consideration of this case.  
(Justman/Henderson: 5-0)

MSC: To grant the landlord's request for a one-month continuance of the consideration of their appeal. (Hurley/Mosbrucker: 5-0)

C. 798 Utah

AL080006

The tenant's petition alleging an unlawful rent increase from \$896.00 to \$2,600.00 per month was granted because the Administrative Law Judge found that the petitioner was a tenant, and not a subtenant, and therefore no rent increase pursuant to Costa-Hawkins was warranted. On appeal, the landlord argues that: the landlord is old and infirm; the landlord's sending one rent increase notice to the petitioner does not make him a tenant; this case is distinguishable from the case of Cobb v. S.F. Rent Board; and the tenants concealed the fact that the original tenant was vacating the premises from the landlord.

MSC: To deny the appeal. (Mosbrucker/Henderson: 5-0)

D. 2502 Cabrillo

AL070191  
(cont. from 11/13/07)



The landlord's petition for a determination pursuant to Rules §1.21 was denied because the Administrative Law Judge found that the subject unit is the tenant's principal place of residence, and she is only temporarily residing at a residential care facility. On appeal, the landlord maintained that: the tenant's mail does not go to the subject unit but, rather, is delivered to her conservator; the tenant is physically able to return to the unit with in-home care but has failed to do so, although she can afford to; and the apartment is no longer the tenant's usual place of return, since she has chosen to relocate to an assisted living facility, rather than returning to the unit. At the meeting on November 13, 2007, the Board voted to continue consideration of this appeal in order for the parties to submit evidence that the tenant has returned to the unit or, if not, why not; or evidence of any efforts the tenant has made to effectuate her intent to return.

MSC: To accept the appeal and remand the case on the record for reconsideration of the facts submitted since the appeal was last considered; the parties will have a further right to appeal.  
(Murphy/Gruber: 4-1; Henderson dissenting)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics for the month of January, 2008.

B. Articles from the Los Angeles Times and the S.F. Chronicle Real Estate Section.

#### VII. Director's Report

Executive Director Wolf informed the Board that she had received a complaint from a member of the public who objected to the Board members' ethnicities being listed on the Commissioner Roster that is posted on the agency's web site, so this information has been removed. The Commissioners declined her offer to have their pictures posted on the web site.

#### VIII. Old Business

Standards for Rescinding Ellis/OMI Notices of Constraints and the Role of Rent Board Staff in Processing Requests for Rescission and Other Petitions

The Board continued their discussion of the standards to be applied to landlord requests to rescind Ellis/OMI eviction notices. The Board has been considering



clarifying the standard by the adoption of a bright-line rule based on whether the tenant in fact vacated after service of the eviction notice. Since there are currently two pending cases involving this issue, the Board's discussion has centered on the timing of the clarification. Commissioner Murphy stated his concurrence with the proposed clarification, but did not wish it to apply to pending cases. The Board then passed the following motion:

MSC: To adopt the following clarification to the standard for rescission of an Ellis/OMI eviction notice: In order for a request for rescission to be granted, the landlord would have to prove that no tenant vacated (or agreed to vacate) after the Ellis/OMI notice was served or show extraordinary circumstances. This clarification will apply prospectively only.  
(Mosbrucker/Justman: 5-0)

IV. Remarks from the Public (cont.)

B. Tenant Jesse Ely of 498 Utah thanked the Board for their vote on his landlord's appeal.

IX. Calendar Items

March 11<sup>th</sup>, 18<sup>th</sup> & 25<sup>th</sup>, 2008 - NO MEETINGS

April 1, 2008

8 appeal considerations

X. Adjournment

President Gruber adjourned the meeting at 7:07 p.m.





DAVID GRUBER  
PRESIDENT

**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,  
April 1, 2008

25 Van Ness Avenue, #70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

**AGENDA**

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

DOCUMENTS DEPT.

MAR 31 2008

SAN FRANCISCO  
PUBLIC LIBRARY

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 1201 – 8<sup>th</sup> Ave. #3

AL080014

The Master Tenant appeals the decision granting a claim pursuant to Rules 6.15C(3).

B. 343 Clipper St.

AT080012

The tenant appeals the dismissal of his petition alleging an unlawful rent increase due to his failure to appear at the continued hearing.

C. 2070 Pacific Ave. #501

AT080016

The tenant appeals the decision granting utility passthroughs on the grounds of financial hardship.

D. 1330 So. Van Ness

AT080009 & AL080010

The Master Tenant and subtenants appeal the decision finding that the subtenants paid a disproportional share of the rent and partially granting a claim of decreased housing services.





E. 757 Green St., 2D

AL080011

The landlord appeals the decision granting a claim of decreased housing services.

F. 520 Geary #103

AL080013

The landlord appeals the decision partially granting a claim of decreased housing services.

G. 520 So. Van Ness #385

AT080013

The tenant appeals the decision denying a claim of decreased housing services under the SRO Hotel Visitor Policy.

H. 2136 Broderick

AT080015

The tenant appeals the decision denying her claim of decreased housing services.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

X. Calendar Items

XI. Adjournment





## ACCESSIBLE MEETING POLICY

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會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4603。

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### **Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement**

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Timothy Lee has been designated to coordinate this agency's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided under the Act, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845.

### **Know Your Rights Under the Sunshine Ordinance**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlet Place, Room 244, San Francisco, CA 94102 at 554-7724.





DAVID GRUBER  
PRESIDENT

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

Tuesday, April 1, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

I. Call to Order

DOCUMENTS DEPT

President Gruber called the meeting to order at 6:05 p.m.

APR 17 2008

II. Roll Call

SAN FRANCISCO  
PUBLIC LIBRARY

Commissioners Present: Beard; Gruber; Henderson; Hurley;  
Mosbrucker; Mosser.  
Commissioners not Present: Justman; Murphy.  
Staff Present: Lee; Wolf.

Commissioner Marshall appeared on the record at 6:15 p.m.; Commissioner Mosser went off the record at 6:30 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of March 4, 2008.  
(Mosbrucker/Hurley: 5-0)

IV. Remarks from the Public

A. Master Tenant Raisa Akinshin of 1201 – 8<sup>th</sup> Ave. #3 (AL080014) told the Board that the Decision presents her with a financial hardship, and submitted a Hardship Application. She said that the subtenant has a lot of complaints, which is very stressful to her. Ms. Akinshin explained that there is a written agreement that provides that the tenancy can be terminated for any reason, but the subtenant doesn't want to leave.

V. Consideration of Appeals

A. 1201 – 8<sup>th</sup> Ave. #3

AL080014





The Master Tenant's appeal was filed one day late because the tenant miscalculated her filing deadline by not counting Presidents' Day.

MSC: To find good cause for the late filing of the appeal.  
(Henderson/Mosbrucker: 5-0)

The subtenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted and the Master Tenant was found liable to the subtenant in the amount of \$1,750.00. The Master Tenant appeals, asserting that: the decision presents her with a financial hardship; the rent for the subtenant's room was the market value of rooms in that neighborhood; the Master Tenant provided additional housing services to the subtenant; and the subtenant refuses to vacate the unit.

MSC: To accept the appeal and remand the case for a hearing on the Master Tenant's claim of financial hardship only; to deny the appeal as to all other issues. (Henderson/Hurley: 4-1; Mosbrucker dissenting)

B. 343 Clipper St.

AT080012

The tenant's petition alleging an unlawful rent increase was dismissed because of the tenant's failure to appear at the continued hearing. On appeal, the tenant explains that: he did not receive notice of the continued hearing; and, since there was no record of a Certificate of Occupancy having been issued for the unit, he assumed that his petition would be upheld without the need for further hearing.

MSC: To accept the appeal and remand the case for a supplemental hearing. Should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled. (Henderson/Marshall: 5-0)

C. 2070 Pacific Ave. #501

AT080016

The tenant's appeal was filed nine months late because the tenant failed to realize that a utility passthrough had been granted until she received her notice of annual rent increase.

MSC: To find good cause for the late filing of the appeal.  
(Henderson/Marshall: 4-1; Gruber dissenting)

The landlord's petition for utility passthroughs for 8 of 29 units was granted. One tenant appeals the decision on the grounds of financial hardship.





MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Henderson/Marshall: 5-0)

D. 1330 So. Van Ness

AT080009 & AL080010

The subtenants' petition alleging that they paid a disproportional share of the rent pursuant to Rules §6.15C(3) was granted and the Master Tenant was found liable to the subtenants in the amount of \$3,878.00. Additionally, decreased housing services claims were granted, in part, and the Master Tenant was found liable in the amount of \$677.50 due to habitability defects on the premises. On appeal, the Master Tenant claims that: there are factual errors in the Decision; there is now only one Master Tenant residing at the premises; the problem with the heat will be rectified; the problem with inadequate electricity has been cured, and resulted, in part, from the hazardous activities of the subtenants; and the Decision presents her with a financial hardship. The subtenants also appeal on the grounds that: there are factual errors in the Decision; they should not be responsible for rectifying conditions that pre-dated their tenancy; a letter from a witness who was not present at the hearing should not have been entered into evidence; their original rent included utilities; the rent reduction amounts granted are inadequate; and DBI has issued a citation for inadequate hot water pressure.

MSC: To deny the appeals except to remand the case to the Administrative Law Judge for a hearing on the Master Tenant's claim of financial hardship. The other Master Tenant must also provide a completed Hardship Application to the Board and the subtenants no later than one week prior to the scheduled remand hearing. (Marshall/Henderson: 5-0)

E. 757 Green St., 2D

AL080011

The tenant's petition alleging decreased housing services due to the temporary loss of use of the laundry room in the building was granted and the landlord was found liable to the tenant in the amount of \$821.25. The landlord appeals the Decision, arguing that: the tenant's testimony regarding her alleged disability was not credible; the short walk to the adjoining building did not constitute a hardship to the tenant; the difference between the two laundry rooms was not substantial; the Findings of Fact are inadequate to justify the Conclusions; and the condition does not rise to the level of a substantial reduction in housing services.

MSC: To deny the appeal. (Marshall/Henderson: 4-1; Hurley dissenting)

F. 520 Geary #103

AL080013



The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,890.25. On appeal, the landlord maintains that: the tenant failed to prove that it was too hot in her unit, this condition was not cited by DBI, and the landlord took steps to mitigate the problem; the loss of closet space after the installation of fire sprinklers was not substantial; two scratches in a new linoleum floor do not constitute a substantial decrease in housing services; and a new stove that is slightly smaller than the replaced appliance does not warrant a rent reduction.

MSF: To deny the appeal. (Marshall/Henderson: 2-3; Gruber, Hurley, Beard dissenting)

MSC: To accept the appeal and remand the case to the Administrative Law Judge to reverse the decision only as to the issue of the linoleum floor and find that the condition does not constitute a substantial decrease in housing services. (Beard/Hurley: 4-1; Gruber dissenting)

G. 520 So. Van Ness #385

AT080017

The tenant's petition alleging a substantial decrease in housing services because of the alleged exclusion of the tenant's nephew from the residential hotel was denied because the Administrative Law Judge found that the tenant failed to prove that hotel management had violated the terms of the Uniform Hotel Visitor Policy. On appeal, the tenant claims that: she was not given a copy of her rental agreement, so she could not provide it to the ALJ; her nephew was not "86'ed" from the hotel; and the landlord's representative lied at the hearing.

MSC: To deny the appeal. (Beard/Gruber: 5-0)

H. 2136 Broderick

AT080015

The tenant's petition alleging the presence of toxic fumes in her unit and an unlawful contract for storage space was denied because the ALJ found that the tenant had failed to meet her burden of proof. The tenant appeals, claiming that: the ALJ did not apply the proper legal standard in evaluating the tenant's evidence; the Dept. of Public Health and Dept. of Building Inspection do not have jurisdiction over claims such as the tenant's; the ALJ ignored statements from other tenants in the building that validated the tenant's complaints; the terms "under some circumstances" and "substantial" are not defined in the Rent Ordinance, to the detriment of the tenant; and she has met her burden by a preponderance of the evidence.

MSC: To deny the appeal. (Hurley/Gruber: 5-0)



VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics for the month of February 2008.

B. The Department's Annual Report on Eviction Notices.

C. Several articles from the Sacramento Bee, San Francisco Examiner, San Francisco Chronicle, New York Times, and BeyondChron.

D. The decision in the case of Chacon v. Litke (Superior Court Case No. CGC-05-448337).

E. A letter from an attorney at the firm of Crow and Rose, requesting that the Board consider amending Rules §12.14(d) to clarify that income is not a factor in determining whether a tenant is disabled within the meaning of Ordinance §37.9(i)(1B)(i). This issue will be put on the Agenda for the next meeting.

VII. Director's Report

Executive Director Wolf informed the Board that, in light of the City's projected budget deficit, the Mayor's Office has instructed all departments to submit a proposed on-going 8% reduction in salaries for the '08-'09 departmental budget.

IV. Remarks from the Public (cont.)

B. Tenant Elizabeth Carol Harvey of 2136 Broderick (AT080015) told the Board that she submitted Declarations from two other tenants verifying the presence of toxic fumes in the building, as well as a letter from her physician. She acknowledged the difficulty of establishing a causal connection between toxins and their effects on people. Ms. Harvey said that she doesn't want monetary reimbursement but, rather, an incentive for the building's management to do something. She asked that the Board reverse their decision, because she is living with a "highly dangerous situation that is difficult to prove."

VIII. Calendar Items

April 8<sup>th</sup> & 15<sup>th</sup>, 2008 - NO MEETINGS

April 22, 2008



April 22, 2008

7 appeal considerations

New Business: Disability Determinations

IX. Adjournment

President Gruber adjourned the meeting at 7:15 p.m.







DAVID GRUBER  
PRESIDENT

**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,

April 22, 2008

25 Van Ness Avenue, #70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

**AGENDA**

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

DOCUMENTS DEPT.

APR 17 2008

SAN FRANCISCO  
PUBLIC LIBRARY

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V. Consideration of Appeals

A. 1408 California St. #306 AT080018

The tenants in one unit appeal the decision approving utility passthroughs.

B. 1828 Mason AT080021

The tenants appeal the determination that the subject unit is not their principal place of residence pursuant to Rules §1.21.

C. 436 Moraga AL080020

The landlord appeals the decision refunding rent overpayments.

D. 827 Corbett #101, 102, 202, 203, 301 AL080023

The landlord appeals the decision denying a Petition for Extension of Time to do Capital Improvement Work.

E. 1200 Washington #10 AL080007  
(rescheduled from 3/4/08)



The landlord appeals the decision finding that the unit is the tenant's principal place of residence pursuant to Rules §1.21.

F. 16 Crestline #4

AT080022

The tenant appeals the decision finding that a rent increase is warranted under Costa-Hawkins.

G. 10 Lupine Ave.

AL080019

The landlord appeals the portion of the decision finding that an elevator hydraulic cylinder and pump jack constitute repairs, and not capital improvements.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

**NOTE:** Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

Disability Determinations Pursuant to Ordinance §37.9(i)(1)(B)(i)/  
Proposed Amendment to Rules §12.14(d)

X. Calendar Items

XI. Adjournment





## ACCESSIBLE MEETING POLICY

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DAVID GRUBER  
PRESIDENT

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

Tuesday, April 22, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

I. Call to Order

DOCUMENTS DEPT.

President Gruber called the meeting to order at 6:05 p.m.

MAY - 2 2008

II. Roll Call

SAN FRANCISCO  
PUBLIC LIBRARY

Commissioners Present: Beard; Gruber; Henderson; Justman;  
Mosbrucker; Mosser.

Commissioners not Present: Hurley; Marshall; Murphy.

Staff Present: Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of April 1, 2008.  
(Henderson/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Andy Braden, representing the landlord in the case at 10 Lupine (AL080019), told the Board that a new hydraulic elevator cylinder has been certified on at least four prior occasions and he thought the issue was settled. Mr. Braden expressed his opinion that the Ammiano amendments in 2003 did not change the definition of a capital improvement. He asked that the Board overturn the Decision of the Administrative Law Judge (ALJ) and make it clear that the lists of capital improvements in the Ordinance and Rules and Regulations are examples, and not exhaustive.

B. Attorney Solvejg Rose asked that the Board amend Rules §12.14 to "fill out the details of the enabling legislation" and confirm the intent of the Board of Supervisors to protect catastrophically ill and disabled tenants from owner move-in eviction. Ms. Rose is defending a tenant in a Declaratory Relief action where the landlord is asserting that the tenant is not protected because he is receiving SSDI instead of SSI, and SSDI does not have a means test. Ms. Rose told the





Board that Supervisor Ammiano's Office told her that it was not their intent that disabled or catastrophically ill tenants had to be low-income in order to qualify for protected status.

C. Tenant Gary Near of 1408 California (AT080018) requested a postponement of his appeal, scheduled for this evening's meeting.

D. Attorney Ray Rockwell, representing tenant Sandy Scott of 1200 Washington #10 (AL080007), told the Board that there was no error or abuse of discretion on the part of the ALJ. Mr. Rockwell told the Board that the tenant spends a great deal of time in Arizona, but her principal place of residence is the apartment in San Francisco. He asked that the Board deny the landlord's appeal.

V. Consideration of Appeals

A. 1408 California St.

AT080018

The landlord's petition for approval of utility passthroughs to 20 of 37 units was granted. One tenant appeals the decision on the grounds that the landlord violated postal regulations and the decision constitutes an abuse of discretion on the part of the Administrative Law Judge. At the meeting, the tenant requested a postponement of the appeal consideration because the transcript he is having prepared is not yet available; he was hospitalized for an ear infection; the record is voluminous; there is no prejudice to the opposing party, who does not object; and the Board has granted continuances on other occasions.

MSC: To postpone consideration of this appeal to the May 20<sup>th</sup> Board meeting; no further continuances will be granted to the tenant for any reason. (Henderson/Justman: 5-0)

B. 1828 Mason

AT080021

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted because the Administrative Law Judge (ALJ) found that the subject unit is not the tenants' principal place of residence. On appeal, the tenants maintain that: they use their Sea Ranch home as a business address because it is larger and has an art studio; they use it as a mailing address because the mailboxes at the subject property are not secure; they are registered to vote in San Francisco; several evidentiary items show the San Francisco address; there is currently no Homeowner's Exemption for the Sea Ranch address; the tenants were not given the opportunity to rebut some of the landlord's submissions, which were speculative and constituted hearsay; the Sea Ranch home is a second residence; and the landlord did not meet their burden of proof.



MSC: To deny the appeal. (Mosser/Gruber: 4-1;  
Mosbrucker dissenting)

C. 436 Moraga St.

AL080020

The tenants' petition alleging an unlawful rent increase and requesting a determination of the proper base rent was granted and the landlord was found liable to the tenants in the amount of \$10,100.00. On appeal, the landlord objects to finding the landlord liable for the entire amount of the overpayment to the tenant petitioners, rather than granting them an amount in proportion to their actual rent payment; maintains that there could be future claims from prior co-tenants for their share of the rent overpayments; asserts that it is unfair for the tenant petitioners to receive a rent refund for a period of time prior to their having lived in the subject unit; and the decision constitutes a windfall to the tenant petitioners.

MSC: To deny the appeal. (Mosbrucker/Henderson: 5-0)

D. 827 Corbett #101, 102, 202, 203, 301

AL080023

The landlords' petition for extension of time to do capital improvement work was denied on procedural grounds because the ALJ found that the landlord failed to file the petition immediately after it became apparent that the work would take more than three months and failed to obtain all necessary permits prior to issuing notices to vacate. On appeal, the landlord contends that: the petition was timely filed because the landlord could not have foreseen new requirements imposed by the Department of Building Inspection and did not have the information required for filing; all permits reasonably believed to be necessary for the project were issued prior to the time eviction notices were issued to the tenants; and the ALJ was biased against the landlord because another building on the property had been Ellised.

MSC: To deny the appeal. (Mosbrucker/Henderson: 5-0)

E. 1200 Washington #10

AL080007

(rescheduled from 3/4/08)

The landlord's petition for a determination pursuant to Rules §1.21 was denied because the Administrative Law Judge found that the subject unit is the tenant's principal place of residence. On appeal, the landlord argues that: the tenant failed to submit requested and essential evidence; the tenant made a misrepresentation at the hearing, which should call her credibility into question; most of the tenant's evidence consisted of her personal opinion; the landlord proved her case by a preponderance of the evidence, which is the proper



standard; the burden of proof should have shifted to the tenant to justify her absence from the unit a majority of the time; and the subject unit is the tenant's second home, which does not constitute a principal place of residence. At the March 4<sup>th</sup> meeting, the landlord's request for a postponement was granted.

MSC: To recuse Commissioner Beard from consideration of this case.  
(Justman/Mosbrucker: 5-0)

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing to consider any new evidence introduced by either party. (Mosser/Henderson: 5-0)

F. 16 Crestline #4

AT080022

The tenant filed a petition contesting a rent increase from \$685.13 to \$2,850.00 and the landlord filed a petition requesting a determination as to whether the increase was justified pursuant to Rules §6.14. The Administrative Law Judge found that the increase was lawful pursuant to Costa-Hawkins because the tenant is a lawful subtenant who did not continuously reside in the unit prior to January 1, 1996. On appeal, the tenant claims that: he did not contradict himself at the hearing but, rather, got confused about the dates he temporarily moved out of the subject unit due to stress; he has new evidence which proves that he lived in the unit prior to 1996; and the decision presents him with a financial hardship.

MSC: To deny the appeal. (Mosser/Gruber: 4-1;  
Mosbrucker dissenting)

G. 10 Lupine Ave.

AL080019

The landlord's petition for certification of capital improvement costs was granted, in part. The landlord appeals the portion of the decision finding that replacement of an elevator hydraulic cylinder and pump jack constitutes a repair, and not a capital improvement. The landlord argues that: the work meets the definition of a capital improvement in that prolonging the life of the elevator prolongs the useful life of the building; the normal life expectancy of such an elevator part is forty years, so replacement cannot be considered routine maintenance and repair; and this work has been certified upon remand in prior cases.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record with instructions to certify the costs of the new hydraulic elevator cylinder and pump jack.  
(Mosser/Justman: 5-0)

VI. Communications



In addition to correspondence regarding cases on the calendar, the Commissioners received the following communications:

A. Ordinance No. 33-08, effective April 16, 2008, which adds subsection 37.9(j) to the Rent Ordinance to require sellers and purchasers to give tenants written disclosure of certain tenant rights before and after the sale of rental property.

B. An article from the Oakland Tribune regarding evictions due to foreclosure.

C. The office workload statistics for the month of March 2008.

D. An invitation to the Mayor's celebration of Asian Pacific American Heritage Month.

#### VII. Director's Report

Executive Director Wolf informed the Board that the Mayor's Office is requiring the Enterprise Departments as well as the General Fund Departments to take an 8% salary reduction for next year.

#### IV. Remarks from the Public (cont.)

E. Attorney Jerome Ghigliotti suggested that the landlord in the case at 436 Moraga write a \$10,000 check to all of the possible parties and the tenants would then have to decide on an equitable division of the proceeds.

F. Andy Braden thanked the Board for his first 5-0 victory on the 10 Lupine appeal. Mr. Braden was not satisfied, however, as he wants the issue settled. He feels that the ALJ shouldn't have found the list of capital improvements to be exhaustive and definitive, but should have decided if the work meets the definition of a capital improvement. Mr. Braden believes that there is a "dependency on the lists instead of legal reasoning."

G. David Blumenfeld, Attorney for the landlord at 827 Corbett, said that he only heard the issue of the landlord's untimely filing discussed, and wondered whether the other two issues that he raised were considered. Mr. Blumenfeld told the Board that the fact that the landlord Ellised another property on the lot shouldn't have been discussed or noted in the Decision.

#### VIII. New Business





The Commissioners briefly discussed the request from an attorney at the firm of Crow and Rose that the Board amend Rules §12.14(d) to clarify that income is not a factor in determining whether a tenant is disabled within the meaning of Ordinance 37.9(i)(1)(B)(i). Senior Administrative Law Judge Tim Lee expressed his concern that the wording of the suggested amendment changes the definition of disability in the Ordinance, which is something that only the Board of Supervisors can do. It was the consensus of the Board to continue discussion of this issue until Commissioners Marshall and Murphy are present.

IX. Calendar Items

April 29, 2008 - NO MEETING

May 6, 2008

10 appeal considerations

Old Business: Disability Determinations

X. Adjournment

President Gruber adjourned the meeting at 7:38 p.m.





DAVID GRUBER  
PRESIDENT

**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,

May 6, 2008

25 Van Ness Avenue, #70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

**AGENDA**

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 601 Leavenworth, Apt. 41

AT080035

The tenant appeals the dismissal of his petition alleging decreased housing services due to his failure to appear at the hearing.

B. 935 Geary St. #904

AT080003

One tenant appeals the decision approving utility passthroughs on the grounds of financial hardship.

C. 174 Turk #203 & 304

AT080033 & -34

Two tenants appeal the dismissal of their petitions alleging decreased housing services due to their failure to appear at the hearing.

D. 429 Bush #53

AT080027

One tenant appeals the decision approving utility passthroughs on the grounds of financial hardship.



E. 1351 Mason # 2 & 11

AT080025

Two tenants appeal the decision approving rent increases based on increased operating expenses on the grounds of financial hardship.

F. 536 Leavenworth #36

AT080030

One tenant appeals the decision approving utility passthroughs on the basis of financial hardship as well as substantive grounds.

G. 310 Columbus #205

AT080029

The tenant appeals the decision denying her claims of decreased housing services.

H. 455 Arlington #9 & 10

AL080031 & -33

The landlord appeals the decision granting claims of decreased housing services due to the failure of the landlord to provide additional keys.

I. 3014 Clay #1-A

AL080024

The landlord appeals the decision determining that no rent increase is warranted pursuant to Costa-Hawkins or Rules §1.21.

J. 3489 – 17<sup>th</sup> St.

AL080028

The landlord appeals the decision determining that no rent increase is warranted pursuant to Costa-Hawkins or Rules §6.14.

VI. Communications

VII. Director's Report

VIII. Old Business

Disability Determinations Pursuant to Ordinance §37.9(i)(1)(B)(i)/  
Proposed Amendments to Rules §12.14(d)

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.



IX. New Business

X. Calendar Items

XI. Adjournment







## ACCESSIBLE MEETING POLICY

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會議提供翻譯服務、聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4603。

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There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

## Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Timothy Lee has been designated to coordinate this agency's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided under the Act, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845.

## Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlet Place, Room 244, San Francisco, CA 94102 at 554-7724.





DAVID GRUBER  
PRESIDENT

GAVIN NEWSOM  
MAYOR

DELINE WOLF  
EXECUTIVE DIRECTOR

**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

Tuesday, May 6, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

**I. Call to Order**

President Gruber called the meeting to order at 6:05 p.m.

**II. Roll Call**

Commissioners Present: Beard; Gruber; Henderson; Hurley;  
Mosbrucker; Mosser.  
Commissioners not Present: Justman; Marshall.  
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:30 p.m.

**III. Approval of the Minutes**

MSC: To approve the Minutes of April 22, 2008.  
(Mosbrucker/Henderson: 5-0)

**IV. Remarks from the Public**

A. James Coy Driscoll, Attorney for the tenant at 3014 Clay (AL080024), told the Board that the tenant hasn't been able to stay at the unit because she is the primary caregiver for her husband, who has cancer. Since there is a subtenant in occupancy on the premises, no rent increase was granted. Mr. Driscoll asked that the Commissioners uphold the Decision and deny the appeal.

B. Tenant Danilo Montemayor of 601 Leavenworth (AT080035) told the Board that English is his second language and that circumstances in the building forced him to file a petition. Mr. Montemayor said that the elevator hasn't been working for almost four weeks, and he lives on the fourth floor. He has lived in the building for twenty-six years and this is the seventh manager, who doesn't do anything. Mr. Montemayor explained that he missed the hearing because he went to the Philippines.

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C. Attorney Solvejg Rose reiterated her request that the Board amend Rules §12.14(d) to clarify that the intent of the Board of Supervisors was to protect disabled tenants from owner move-in eviction, without regard to their income or resources. Ms. Rose said that the Supervisors did not want to exclude tenants who had resources of more than \$2,000, nor undocumented workers.

D. Tenant Jane Rocio Evans of 310 Columbus (AT080029) told the Board that the three letters from Rod Wong of the Eviction Unit to her landlord affirmed the presence of bedbugs in her unit. Ms. Evans said that she was unaware of her right to file a petition alleging decreased housing services, and that she did not speak to the landlord directly because he was abusive. Ms. Evans told the Board that the landlord filed an Unlawful Detainer even though he was told she was going to move out, which "attests to his character."

V. Consideration of Appeals

A. 601 Leavenworth, Apt. 41

AT080035

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant provides evidence to demonstrate that he was out of town at the time the hearing was noticed.

MSC: To accept the appeal and remand the case for a new hearing;  
should the tenant again fail to appear, no further hearings will be  
scheduled. (Henderson/Mosbrucker: 4-1; Hurley dissenting)

B. 935 Geary St. #904

AT08003

The tenant's appeal was filed seven months late because the tenant thought that his attorney has successfully appealed the imposition of the utility passthrough approved by the Administrative Law Judge.

MSC: To find good cause for the late filing of the appeal.  
(Henderson/Mosbrucker: 4-1; Gruber dissenting)

The tenant's hardship appeal of a decision approving utility passthroughs was dismissed due to the tenant's failure to appear at the properly noticed remand hearing. On appeal, the tenant explains that he was ill on the day of the remand hearing and thought that his attorney would represent him.

MSC: To accept the appeal and remand the case for a new hearing;  
should the tenant again fail to appear, absent extraordinary



circumstances, no further hearings will be scheduled.  
(Murphy/Mosbrucker: 5-0)

C. 174 Turk #203 & 304

AT080033 & -34

Two tenant petitions alleging substantially decreased housing services were dismissed due to the tenants' failures to appear at the properly noticed hearing. On appeal, the tenants explain that one of the tenants was incapacitated by a severe coughing spell and the other tenant had to watch his young daughter until it had passed. By that time, it was too late to make it to the hearing, and the petitions had been dismissed.

MSC: To accept the appeals and remand the cases for a new hearing; should the tenants again fail to appear, no further hearings will be scheduled. (Henderson/Mosbrucker: 5-0)

D. 429 Bush #53

AT080027

The tenant's appeal was filed one day late because the tenant needed help in completing the Hardship Application form.

MSC: To find good cause for the late filing of the appeal.  
(Murphy/Henderson: 5-0)

The landlord's petition for approval of utility passthroughs for 14 of 28 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship.  
(Henderson/Mosbrucker: 5-0)

E. 1351 Mason #2 & 11

AT080025 & -26

The landlords' petition for rent increases based on increased operating expenses for 5 of 12 units was granted. The tenants in two units appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal of the tenants in unit #2 and remand the case for a hearing on the tenants' claim of financial hardship.  
(Mosbrucker/Henderson: 5-0)

MSC: To accept the appeal of the tenant in unit #11 and remand the case for a hearing on the tenant's claim of financial hardship.  
(Mosbrucker/Henderson: 5-0)





F. 536 Leavenworth #36

AT080030

The landlord's petition for utility passthroughs for 22 of 62 units was approved. One tenant appeals the decision on the grounds of financial hardship as well as the claim that she never uses any of the building's parking spaces.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship only.  
(Mosbrucker/Henderson: 5-0)

G. 310 Columbus #205

AT080029

The tenant's petition alleging decreased housing services was denied because the Administrative Law Judge found that the tenant had failed to notify the landlord of the alleged problems, and thereafter failed to pay rent. The tenant appeals, claiming that: the landlord was notified of the problems by a Rent Board staff member who was investigating her wrongful eviction claim; there are factual errors in the Decision; there were serious habitability problems on the premises; the ALJ abused her discretion in this case; and the landlord retaliated against her by filing an unlawful detainer when she was planning to move out.

MSC: To deny the appeal. (Hurley/Gruber: 5-0)

H. 455 Arlington #9 & 10

AL080031 & -33

The tenants in two units filed petitions alleging substantial decreases in housing services because of the landlord's refusal to provide additional keys to the front door of the building. The landlord failed to appear at the properly noticed hearing. The petitions were granted and the landlord was found liable to the tenants in the amount of \$50.00 per month. On appeal, the landlord claims not to have received notice of the hearing because of a calendaring error. Additionally, the landlord asserts: that no testimony or evidence was received from one of the petitioners, who appeared by representative; that the Ordinance does not require that a key be provided for an unidentified "emergency contact person" nor unidentified others; that the rent reduction is excessive as to the unit with the lower base rent; and that there has been no reduction in housing services as the locks were changed to enhance safety and security at the building.

MSC: To accept the appeals and remand the cases to the Administrative Law Judge for a new hearing.  
(Mosbrucker/Murphy: 5-0)

I. 3014 Clay #1-A

AL080024



The landlord's petition seeking a rent increase pursuant to Rules §1.21 and/or Costa-Hawkins was denied. Although the Administrative Law Judge found that the subject unit is not the tenant's principal place of residence, there is a subtenant on the premises who is a "Tenant in Occupancy" and therefore no increase was warranted pursuant to §1.21. Additionally, the tenant was determined to still "permanently reside" at the subject unit, so a Costa-Hawkins increase was precluded as well. On appeal, the landlord argues that the subtenant does not occupy the subject unit as his principal place of residence, and he does not reside in the unit with the knowledge and consent of the landlord.

MSC: To deny the appeal. (Mosbrucker/Henderson: 3-2; Gruber, Murphy dissenting)

J. 3489 – 17<sup>th</sup> St.

AL080028

The tenant's petition alleging an unlawful rent increase was granted because the ALJ found that the market increase was not authorized by Rules §6.14 or Costa-Hawkins. On appeal, the landlord maintains that: the Cobb case is distinguishable from the instant case in that there was no dispute as to the status of the original tenant in Cobb, which must be determined in this case; the landlord never accepted the petitioner as a tenant; and the original tenant is no longer permanently residing on the premises, so a rent increase is warranted pursuant to Costa-Hawkins.

MSC: To deny the appeal. (Mosbrucker/Henderson: 5-0)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. Two articles from the S.F. Chronicle regarding two landlords in the South of Market accused of serious tenant harassment.

B. An article from the Sacramento Bee regarding Governor Schwarzenegger's opposition to Proposition 98 on the June ballot.

#### VII. Director's Report

Executive Director Wolf informed the Board that the Senate Judiciary Committee passed SB 1598, which requires a one-year notice to tenants that the building, including the interior of each unit, will become smoke-free. Rent controlled units could be converted to smoke-free, but only after the current tenant moves



remains prevalent among low-income persons, and the bill could lead to even fewer housing choices among that population. Senior Administrative Law Judge Tim Lee told the Board that the Brown writ (Case No. 507716) regarding 2340 Filbert Street has been settled and dismissed. Ms. Wolf also let the Board know that Attorney Joey Koomas has been hired as a new Citizens' Complaint Officer and will start on June 2<sup>nd</sup>.

#### VIII. Old Business

Disability Determinations Pursuant to Ordinance §37.9(i)(1)(B)(i)/  
Proposed Amendments to Rules §12.14(d)

The Commissioners continued their discussion of a request that the Board amend Rules §12.14(d) to clarify that income is not a factor in determining whether a tenant is disabled within the meaning of Ordinance §37.9(i)(1)(B)(i). The Board was given a copy of the 2002 case of Tate v. Thompson (CUD-01-600545), which granted summary adjudication to the tenants on this same issue. Senior Administrative Law Judge Tim Lee told the Board that, although the case is unpublished and not binding, it could be helpful upon judicial notice, as the court likes to be consistent. Commissioner Mosbrucker remarked that the proposed amendment is too specific and involved; rather, the language just needs to make clear that the tenant only needs to meet the disability definition under the SSI Program, with no other qualifications. Sr. ALJ Lee will draft such language for the next meeting.

#### IV. Remarks from the Public (cont.)

E. Jane Rocio Evans told the Board that the landlord changed his story at the hearing. Ms. Evans believes that the ruling by the Board in her case is a "self-serving" attempt to cover up errors by staff and the Board, and she threatened an investigation. Ms. Evans urged the Board to look at her case again.

F. Tenant Geeta Bhadaura told the Board that she was subletting from a Master Tenant who gave her a notice to vacate for her own use. Ms. Bhadaura explained that some tenants are living for free in their units by making money off of other tenants, although they don't have the responsibilities of an owner. She also feels that tenants don't have the same remedies against Master Tenants as they do against an owner.

#### IX. Calendar Items

May 13, 2008 - NO MEETING



May 20, 2008

7 appeal considerations

Old Business: Disability Determinations

New Business: Rules §1.12, Calculation of the Allowable Annual Increase

X. Adjournment

President Gruber adjourned the meeting at 7:26 p.m.







## ACCESSIBLE MEETING POLICY

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(5/04) snstsh Board acctmg





DAVID GRUBER  
PRESIDENT

GAVIN NEWSOM  
Mayor

DELENE WOLF  
EXECUTIVE DIRECTOR

**CORRECTED MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

Tuesday, May 6, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

**I. Call to Order**

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President Gruber called the meeting to order at 6:05 p.m.

MAY 19 2008

**II. Roll Call**

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PUBLIC LIBRARY

Commissioners Present: Beard; Gruber; Henderson; Hurley;  
Mosbrucker; Mosser.  
Commissioners not Present: Justman; Marshall.  
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:30 p.m.

**III. Approval of the Minutes**

MSC: To approve the Minutes of April 22, 2008.  
(Mosbrucker/Henderson: 5-0)

**IV. Remarks from the Public**

A. James Coy Driscoll, Attorney for the tenant at 3014 Clay (AL080024), told the Board that the tenant hasn't been able to stay at the unit because she is the primary caregiver for her husband, who has cancer. Since there is a subtenant in occupancy on the premises, no rent increase was granted. Mr. Driscoll asked that the Commissioners uphold the Decision and deny the appeal.

B. Tenant Danilo Montemayor of 601 Leavenworth (AT080035) told the Board that English is his second language and that circumstances in the building forced him to file a petition. Mr. Montemayor said that the elevator hasn't been working for almost four weeks, and he lives on the fourth floor. He has lived in the building for twenty-six years and this is the seventh manager, who doesn't do anything. Mr. Montemayor explained that he missed the hearing because he went to the Philippines.

SF  
R52  
#2  
5/6/08  
corrected



C. Attorney Solvejg Rose reiterated her request that the Board amend Rules §12.14(d) to clarify that the intent of the Board of Supervisors was to protect disabled tenants from owner move-in eviction, without regard to their income or resources. Ms. Rose said that the Supervisors did not want to exclude tenants who had resources of more than \$2,000, nor undocumented workers.

D. Tenant Jane Rocio Evans of 310 Columbus (AT080029) told the Board that the three letters from Rod Wong of the Eviction Unit to her landlord affirmed the presence of bedbugs in her unit. Ms. Evans said that she was unaware of her right to file a petition alleging decreased housing services, and that she did not speak to the landlord directly because he was abusive. Ms. Evans told the Board that the landlord filed an Unlawful Detainer even though he was told she was going to move out, which "attests to his character."

V. Consideration of Appeals

A. 601 Leavenworth, Apt. 41

AT080035

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant provides evidence to demonstrate that he was out of town at the time the hearing was noticed.

MSC: To accept the appeal and remand the case for a new hearing;  
should the tenant again fail to appear, no further hearings will be  
scheduled. (Henderson/Mosbrucker: 4-1; Hurley dissenting)

B. 935 Geary St. #904

AT08003

The tenant's appeal was filed seven months late because the tenant thought that his attorney has successfully appealed the imposition of the utility passthrough approved by the Administrative Law Judge.

MSC: To find good cause for the late filing of the appeal.  
(Henderson/Mosbrucker: 4-1; Gruber dissenting)

The tenant's hardship appeal of a decision approving utility passthroughs was dismissed due to the tenant's failure to appear at the properly noticed remand hearing. On appeal, the tenant explains that he was ill on the day of the remand hearing and thought that his attorney would represent him.

MSC: To accept the appeal and remand the case for a new hearing;  
should the tenant again fail to appear, absent extraordinary



circumstances, no further hearings will be scheduled.  
(Murphy/Mosbrucker: 5-0)

C. 174 Turk #203 & 304

AT080033 & -34

Two tenant petitions alleging substantially decreased housing services were dismissed due to the tenants' failures to appear at the properly noticed hearing. On appeal, the tenants explain that one of the tenants was incapacitated by a severe coughing spell and the other tenant had to watch his young daughter until it had passed. By that time, it was too late to make it to the hearing, and the petitions had been dismissed.

MSC: To accept the appeals and remand the cases for a new hearing; should the tenants again fail to appear, no further hearings will be scheduled. (Henderson/Mosbrucker: 5-0)

D. 429 Bush #53

AT080027

The tenant's appeal was filed one day late because the tenant needed help in completing the Hardship Application form.

MSC: To find good cause for the late filing of the appeal.  
(Murphy/Henderson: 5-0)

The landlord's petition for approval of utility passthroughs for 14 of 28 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship.  
(Henderson/Mosbrucker: 5-0)

E. 1351 Mason #2 & 11

AT080025 & -26

The landlords' petition for rent increases based on increased operating expenses for 5 of 12 units was granted. The tenants in two units appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal of the tenants in unit #2 and remand the case for a hearing on the tenants' claim of financial hardship.  
(Mosbrucker/Henderson: 5-0)

MSC: To accept the appeal of the tenant in unit #11 and remand the case for a hearing on the tenant's claim of financial hardship.  
(Mosbrucker/Henderson: 5-0)





F. 536 Leavenworth #36

AT080030

The landlord's petition for utility passthroughs for 22 of 62 units was approved. One tenant appeals the decision on the grounds of financial hardship as well as the claim that s\*\*e never uses any of the building's parking spaces.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship only.  
(Mosbrucker/Henderson: 5-0)

G. 310 Columbus #205

AT080029

The tenant's petition alleging decreased housing services was denied because the Administrative Law Judge found that the tenant had failed to notify the landlord of the alleged problems, and thereafter failed to pay rent. The tenant appeals, claiming that: the landlord was notified of the problems by a Rent Board staff member who was investigating her wrongful eviction claim; there are factual errors in the Decision; there were serious habitability problems on the premises; the ALJ abused her discretion in this case; and the landlord retaliated against her by filing an unlawful detainer when she was planning to move out.

MSC: To deny the appeal. (Hurley/Gruber: 5-0)

H. 455 Arlington #9 & 10

AL080031 & -33

The tenants in two units filed petitions alleging substantial decreases in housing services because of the landlord's refusal to provide additional keys to the front door of the building. The landlord failed to appear at the properly noticed hearing. The petitions were granted and the landlord was found liable to the tenants in the amount of \$50.00 per month. On appeal, the landlord claims not to have received notice of the hearing because of a calendaring error. Additionally, the landlord asserts: that no testimony or evidence was received from one of the petitioners, who appeared by representative; that the Ordinance does not require that a key be provided for an unidentified "emergency contact person" nor unidentified others; that the rent reduction is excessive as to the unit with the lower base rent; and that there has been no reduction in housing services as the locks were changed to enhance safety and security at the building.

MSC: To accept the appeals and remand the cases to the Administrative Law Judge for a new hearing.  
(Mosbrucker/Murphy: 5-0)

I. 3014 Clay #1-A

AL080024



The landlord's petition seeking a rent increase pursuant to Rules §1.21 and/or Costa-Hawkins was denied. Although the Administrative Law Judge found that the subject unit is not the tenant's principal place of residence, there is a subtenant on the premises who is a "Tenant in Occupancy" and therefore no increase was warranted pursuant to §1.21. Additionally, the tenant was determined to still "permanently reside" at the subject unit, so a Costa-Hawkins increase was precluded as well. On appeal, the landlord argues that the subtenant does not occupy the subject unit as his principal place of residence, and he does not reside in the unit with the knowledge and consent of the landlord.

MSC: To deny the appeal. (Mosbrucker/Henderson: 3-2; Gruber, Murphy dissenting)

J. 3489 – 17<sup>th</sup> St.

AL080028

The tenant's petition alleging an unlawful rent increase was granted because the ALJ found that the market increase was not authorized by Rules §6.14 or Costa-Hawkins. On appeal, the landlord maintains that: the Cobb case is distinguishable from the instant case in that there was no dispute as to the status of the original tenant in Cobb, which must be determined in this case; the landlord never accepted the petitioner as a tenant; and the original tenant is no longer permanently residing on the premises, so a rent increase is warranted pursuant to Costa-Hawkins.

MSC: To deny the appeal. (Mosbrucker/Henderson: 5-0)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. Two articles from the S.F. Chronicle regarding two landlords in the South of Market accused of serious tenant harassment.

B. An article from the Sacramento Bee regarding Governor Schwarzenegger's opposition to Proposition 98 on the June ballot.

#### VII. Director's Report

Executive Director Wolf informed the Board that the Senate Judiciary Committee passed SB 1598, which requires a one-year notice to tenants that the building, including the interior of each unit, will become smoke-free. Rent controlled units could be converted to smoke-free, but only after the current tenant moves



voluntarily. Tenant advocates remain opposed to the bill because smoking remains prevalent among low-income persons, and the bill could lead to even fewer housing choices among that population. Senior Administrative Law Judge Tim Lee told the Board that the Brown writ (Case No. 507716) regarding 2340 Filbert Street has been settled and dismissed. Ms. Wolf also let the Board know that Attorney Joey Koomas has been hired as a new Citizens' Complaint Officer and will start on June 2<sup>nd</sup>.

#### VIII. Old Business

##### Disability Determinations Pursuant to Ordinance §37.9(i)(1)(B)(i)/ Proposed Amendments to Rules §12.14(d)

The Commissioners continued their discussion of a request that the Board amend Rules §12.14(d) to clarify that income is not a factor in determining whether a tenant is disabled within the meaning of Ordinance §37.9(i)(1)(B)(i). The Board was given a copy of the 2002 case of Tate v. Thompson (CUD-01-600545), which granted summary adjudication to the tenants on this same issue. Senior Administrative Law Judge Tim Lee told the Board that, although the case is unpublished and not binding, it could be helpful upon judicial notice, as the court likes to be consistent. Commissioner Mosbrucker remarked that the proposed amendment is too specific and involved; rather, the language just needs to make clear that the tenant only needs to meet the disability definition under the SSI Program, with no other qualifications. Sr. ALJ Lee will draft such language for the next meeting.

#### IV. Remarks from the Public (cont.)

E. Jane Rocio Evans told the Board that the landlord changed his story at the hearing. Ms. Evans believes that the ruling by the Board in her case is a "self-serving" attempt to cover up errors by staff and the Board, and she threatened an investigation. Ms. Evans urged the Board to look at her case again.

F. Tenant Geeta Bhadaura told the Board that she was subletting from a Master Tenant who gave her a notice to vacate for her own use. Ms. Bhadaura explained that some tenants are living for free in their units by making money off of other tenants, although they don't have the responsibilities of an owner. She also feels that tenants don't have the same remedies against Master Tenants as they do against an owner.

#### IX. Calendar Items

May 13, 2008 - NO MEETING



May 20, 2008

7 appeal considerations

Old Business: Disability Determinations

New Business: Rules §1.12, Calculation of the Allowable Annual Increase

X. Adjournment

President Gruber adjourned the meeting at 7:26 p.m.







**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

DAVID GRUBER  
PRESIDENT

Tuesday, 6:00 p.m.,

May 20, 2008

25 Van Ness Avenue, #70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

**AGENDA**

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

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MAY 16 2008

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 1408 California

AT080018

(post. From 4/22/08)

One tenant appeals the decision approving utility passthroughs.

B. 536 Leavenworth #44 & 1006

AT080042 & -43

Two tenants appeal the decision approving utility passthroughs on the grounds of financial hardship.

C. 400 Dolores #7

AL080041

The landlord appeals the decision granting a claim of decreased housing services due to the landlord's failure to provide additional keys to the unit.

D. 505 - 26<sup>th</sup> Ave. #1, 2 & 3

AL080040

The landlord appeals the decision denying certification of capital improvement costs.



E. 1550 Fell St., Unit B

AL080038

The landlord appeals the remand decision denying a request for rescission of a Notice of Intent to Withdraw Residential Units from the Rental Market.

F. 1796 Beach St.

AT080037

The tenants appeal the decision finding that a rent increase is warranted pursuant to Costa-Hawkins.

G. 1547 Clay #205

AT080039

The tenants appeal the decision denying claims of decreased housing services.

VI. Communications

VII. Director's Report

VIII. Old Business

Disability Determinations Pursuant to Ordinance §37.9(i)(1)(B)(i)/  
Proposed Amendments to Rules §12.14(d)

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

Rules §1.12: Calculation of the Allowable Annual Rent Increase

X. Calendar Items

XI. Adjournment



DAVID GRUBER  
PRESIDENT

MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

GAVIN NEWSOM  
MAYOR

DELINE WOLF  
EXECUTIVE DIRECTOR

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
B ARTHOLOMEW MURPHY

Tuesday, May 20, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

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JUN - 6 2008

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I. Call to Order

President Gruber called the meeting to order at 6:06 p.m.

II. Roll Call

Commissioners Present: Beard; Gruber; Henderson; Hurley;  
Justman; Marshall; Mosbrucker.  
Commissioners not Present: Mosser.  
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:16 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of May 6, 2008.  
(Hurley/Marshall: 5-0)

IV. Remarks from the Public

A. James Coy Driscoll, Attorney for the tenant at 400 Dolores #7 (AL080041), told the Board that the tenant properly requested additional keys, which were refused by the landlord. The landlord failed to appear at the hearing, and is appealing on the grounds of non-receipt of the Notice of Hearing. Mr. Driscoll said that the landlord's negligence in calendaring the hearing did not provide a basis for granting the appeal, and asked that it be denied.

B. Tenant Carol Morgenstern of 1796 Beach (AT080037) told the Board that she was not properly served with a Rules § 6.14 notice because she did not pick it up at the Post Office. Ms. Morgenstern said that she told the landlord she had moved in and the landlord thereafter accepted rent from her. She didn't appear at the hearing because she thought the landlord would be "true and



clear," and she is only appealing the decision because the landlord gave falsified facts at the hearing.

C. Tenant Shane Tice of 1547 Clay #205 (AT080039) told the Board that their neighbors are harassing his family, but the landlord is saying that Mr. Tice is threatening the neighbors and harassing the building manager. The landlord is threatening to obtain a restraining order against him. Mr. Tice said that he has had no personal contact with the manager, who is now saying he's dangerous.

D. Tenant Gary Near of 1408 California (AT080018) spoke on behalf of himself and tenant Terry Perrin. Mr. Near submitted a Motion to Disqualify President Gruber due to a personal relationship with Mr. Near's landlord. Mr. Near alleged that there were perjured representations regarding ownership of the building; and a "secretive" e-mail from a Senior Administrative Law Judge (ALJ) to the landlord's representative. Mr. Near said that there is no such entity as "Citi Apartments" and that the ALJ did not take administrative notice of the other 39 petitions that were filed by the landlord on the last day of the year. Mr. Near told the Commissioners that there was an investigatory hearing before the Board of Supervisor's Land Use Committee regarding his landlord's "pervasive unlawful business practices and basic dishonesty." Mr. Near also threatened a federal investigation.

#### V. Consideration of Appeals

##### A. 1408 California

AT080018

(post. From 4/22/08)

The landlord's petition for approval of utility passthroughs to 20 of 37 units was granted. One tenant appeals the decision on the grounds that the landlord violated postal regulations and the decision constitutes an abuse of discretion on the part of the Administrative Law Judge. At the April 22<sup>nd</sup> meeting, the tenant's request for postponement of the appeal consideration was granted, with the stipulation that no further continuances would be granted to the tenant.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

##### B. 536 Leavenworth #44 & 1006

AT080042 & -43

The landlord's petition for approval of utility passthroughs for 22 of 62 units was granted. Two tenants appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases for hearings on the tenants' claims of financial hardship. (Marshall/Murphy: 5-0)



C. 400 Dolores #7

AL080041

The tenant's petition alleging decreased housing services due to the landlord's failure to provide her with additional keys to the building was granted and the landlord was found liable to the tenant in the amount of \$50.00 per month. The landlord failed to appear at the properly noticed hearing. The landlord appeals, explaining that the fax transmission he sent to his attorney concerning the hearing failed to transmit; and the restriction on providing additional keys was undertaken as a security measure.

MSC: To accept the appeal and remand the case for a new hearing; should the landlord again fail to appear, absent extraordinary circumstances, no further remand hearings will be scheduled. The tenant's reduced base rent shall remain in effect unless and until a different base rent is established by the Board.  
(Murphy/Marshall: 5-0)

D. 505 – 26<sup>th</sup> Ave. #1, 2 & 3

AL080040

The landlord's petition for certification of the costs of a new water heater was denied because the landlord failed to abate a Notice of Violation for the condition of the boiler for almost three years, without explanation. On appeal, the landlord argues that: his request for continuance of the hearing was denied; PG&E was responsible for some of the boiler malfunctions; and he could not afford to do the work and had to obtain a loan to pay property taxes on the building.

MSC: To deny the appeal. (Henderson/Marshall: 5-0)

E. 1550 Fell St., Unit B

AL080038

The landlord's request for rescission of a Notice of Intent to Withdraw Residential Units from the Rental Market was denied because the ALJ found that the tenants had vacated the unit as a result of the Ellis filing. On appeal, the Board remanded the case for a supplemental hearing on the issue of the tenants' motivation in vacating the unit. In the Decision on Remand, the ALJ again denies the landlord's request, finding that the landlord failed to prove that the tenants agreed to voluntarily vacate the unit independent of the Ellis notice. On further appeal, the landlord argues that: the Decision is based on guesses and conjectures, rather than the evidence, which was ignored; there was no evidence that the tenants' motivation in vacating the premises was the Ellis filing; it would be a violation of Rent Board and public policy to not grant the landlord's petition; and extraordinary circumstances exist for granting the landlord's petition.





MSC: To recuse Commissioner Justman from consideration of this appeal. (Murphy/Beard: 5-0)

MSC: To deny the appeal. (Marshall/Henderson: 3-2; Gruber, Murphy dissenting)

F. 1796 Beach St.

AT080037

The landlord's petition seeking an unlimited rent increase was granted because the ALJ found that the last original tenant had vacated the unit and the remaining occupants are subtenants who moved in after January 1, 1996. On appeal, the tenants claim that they have been paying rent directly to the landlord and therefore are co-tenants for whom no Costa-Hawkins rent increase is warranted.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing. (Marshall/Murphy: 4-1; Gruber dissenting)

G. 1547 Clay #205

AT080039

The tenants' petition alleging substantial decreases in housing services due to noise from a neighboring unit and a leak in the refrigerator was denied. On appeal, the tenants claim that: they are being harassed by hostile, noisy neighbors who do not like children; the landlord also does not want children in the building, which constitutes discrimination; the building manager lied at the hearing; the neighbors complained even when they were engaging in normal activities, such as washing dishes; and their intimidation and harassment claims were not adequately addressed in the Decision.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications: articles from the S.F. Chronicle, S.F. Examiner and the New York Times, and proposed amendments to Rules Sections 1.12 and 12.14.

#### VII. Director's Report

Executive Director Wolf informed the Commissioners that there was a hearing regarding the business practices of Citi Apartments before the Land Use Committee of the Board of Supervisors on May 12<sup>th</sup>.



VIII. Old Business

Disability Determinations Pursuant to Ordinance §37.9(i)(1)(B)(i)/  
Proposed Amendments to Rules §12.14(d)

At its May 6, 2008 meeting, the Board requested staff to draft a possible amendment to §12.14 of the Rules and Regulations clarifying that in order to have protected status under Ordinance Section 37.9(i)(1)(B), the tenant is only required to meet the disability standard, and not any other requirements, of the federal Supplemental Security Income/California State Supplemental Program (SSI/SSP). The proposed clarifying amendment, with additions in underline and deletions in strikethrough, is set forth below.

(d) A tenant is disabled under Ordinance Section 37.9(i)(1)(B)(i) if the tenant meets the standard for blindness or disability under the federal Supplemental Security Income/California State Supplemental Program (SSI/SSP). In determining whether a tenant is disabled ~~as defined under Section 37.9(i)(1)(B)(i),~~ a finder of fact shall consider relevant evidence, including:

- (1) findings by any government entity concerning a disability;
- (2) testimony concerning the disability; and
- (3) medical evidence concerning the disability.

MSC: To put the proposed amendments to Rules and Regulations  
Section 12.14(d) out for Public Hearing. (Murphy/Marshall: 5-0)

IV. Remarks from the Public (cont.)

E. Tenant Shane Tice of 1547 Clay told the Board that the ALJ didn't feel that he met his burden of proof. Mr. Tice said that he provided a copy of a letter from the landlord saying that they felt threatened by him, although the building manager contradicted that at the hearing. Mr. Tice finds it "scary" that his landlord's agents have the right to carry guns and have the same authority as peace officers. He also said that there was constant construction in the building but they couldn't look at a toilet that was out for three days.

IX. New Business

Rules §1.12: Calculation of the Allowable Annual Rent Increase



Executive Director Wolf informed the Commissioners that there is a problem with the methodology for calculating the annual allowable rent increase currently set out in the Rules and Regulations. Rules and Regulations Section 1.12 specifies the data to be used in calculating the annual allowable increase. Section 1.12(a) currently states that the annual increase "shall be no more than 60% of the percentage increase in the consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region as published by the U.S. Department of Labor for the 12 month period ending November 30." (emphasis added) However, for a number of years the Department of Labor's Bureau of Labor Statistics has not published monthly data for the San Francisco-Oakland-San Jose region, and only publishes the data bi-monthly, starting in February each year. Thus, data is published for October 31 and December 31, but not for November 30. In the absence of data for November 30, staff has been using the 12 month period ending October 31. Staff therefore recommended that the Board make a conforming technical amendment to Section 1.12(a) and drafted the following proposed amendment (with additions in underline and deletions in strikethrough).

**Section 1.12 Annual Rent Increase**

(Amended February 21, 1984; effective March 1, 1984;  
amended

December 8, 1992; Subsection (b) amended August 20, 1996.

(a) Where a landlord is entitled to an annual rent increase to be effective from December 8, 1992 through February 28, 1993, the allowable amount of increase is 1.6%. Thereafter, the annual allowable increase determined by the Board shall become effective each March 1, and shall be no more than 60% of the percentage increase in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region as published by the U.S. Department of Labor for the 12 month period ending ~~November 30~~ October 31. In determining the allowable percentage rent increase, numbers of .04 and below shall be rounded down to the nearest tenth decimal place, and numbers of .05 and above shall be rounded up to the nearest tenth decimal place. In no event, however, shall the allowable annual increase be greater than seven percent (7%). The Rent Board shall publish the annual allowable increase amount on or about January 1. The published increase shall



be determined only once for each 12 month period and shall remain in effect until the next scheduled recalculation.

MSC: To put the proposed amendment to Rules and Regulations  
Section 1.12(a) out for Public Hearing.  
(Murphy/Henderson: 5-0)

X. Calendar Items

May 27<sup>th</sup> & June 3<sup>rd</sup>, 2008 - NO MEETINGS

June 10, 2008

**6:30** 10 appeal considerations

**7:00** Public Hearing: Proposed Amendments to Rules Sections 12.14(d) &  
1.12(a)

XI. Adjournment

President Gruber adjourned the meeting at 7:05 p.m.







DAVID GRUBER  
PRESIDENT

**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
Mayor

DELENE WOLF  
EXECUTIVE DIRECTOR

Tuesday, 6:30 p.m.,

June 10, 2008

25 Van Ness Avenue, #70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEFTI MOSSER  
BARTHOLOMEW MURPHY

**AGENDA**

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

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JUN - 6 2008

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

A. 1059 Leavenworth #12 AL080044

The landlord appeals the decision granting claims of decreased housing services, alleging non-receipt of the Notice of Hearing.

B. 1616 Taylor #7 AT080047

One tenant appeals the decision approving utility passthroughs on the grounds of financial hardship.

C. 405 Serrano 5D AT080048

One tenant appeals the decision approving utility passthroughs on the grounds of financial hardship.

D. 2070 Pacific #501 AT080050

One tenant appeals the decision approving utility passthroughs on the grounds of financial hardship.



E. 7A Gonzalez Dr.

AT080045

One tenant appeals the decision granting utility passthroughs.

F. 520 Holloway Ave.

AL080049

The landlord appeals the decision denying a Petition for Extension of Time to do Capital Improvement Work.

G. 2040 Franklin #708

AL080046

The landlord appeals the decision denying a Petition for Extension of Time to do Capital Improvement Work.

H. 221A Douglass St.

AL080051

The landlord appeals the decision denying a Petition for Extension of Time to do Capital Improvement Work

I. 272 Downey St. #1

AL080052

The landlord appeals the decision granting claims of decreased housing services.

J. 264 B Carl St.

AL080053

The landlord appeals the decision granting a claim of unlawful rent increases.

VI. Public Hearing

7:00 Proposed Amendments to Rules Sections 12.14(d) Regarding Disability Determinations Pursuant to Ordinance §37.9(i)(1)(B)(i) and Rules §1.12 Regarding Calculation of the Allowable Annual Rent Increase

VII. Communications

VIII. Director's Report

IX. Old Business

IV. Remarks from the Public (cont.)



**NOTE:** Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- X. New Business
- XI. Calendar Items
- XII. Adjournment





## ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4603 at least 72 hours prior to the meeting. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4603 to place your specific request. Late requests will be honored if possible.

會議提供翻譯服務，聲音增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4603。

Se pueden obtener servicios de traduccion, ampliacion de sonida, u otras formas de presentacion si se solicitan por lo menos 72 horas antes de la reunion. Llame al 252-4603 para hacer su solicitud.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. All MUNI Metro lines at Van Ness and Market Street are accessible. For other accessible MUNI lines serving this location and information about MUNI accessible services, call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

## Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Timothy Lee has been designated to coordinate this agency's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided under the Act, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845.

## Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlet Place, Room 244, San Francisco, CA 94102 at 554-7724.







May 27, 2008

GAVIN NEWSOM  
MAYORDAVID GRUBER  
PRESIDENT**NOTICE OF PUBLIC HEARING**DELENE WOLF  
EXECUTIVE DIRECTOR

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BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

<b>DATE:</b>	<b>June 10, 2008</b>	<b>MAY 29 2008</b>
<b>TIME:</b>	<b>7:00 P.M.</b>	<b>SAN FRANCISCO PUBLIC LIBRARY</b>
<b>PLACE:</b>	<b>25 VAN NESS AVENUE (AT MARKET ST.) SUITE 70, LOWER LEVEL SAN FRANCISCO, CALIFORNIA</b>	

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON PROPOSED AMENDMENTS TO RULES AND REGULATIONS SECTIONS 12.14 AND 1.12. THE INTENT OF THE AMENDMENTS ARE TO CLARIFY THAT THERE IS NO "MEANS TEST" FOR PURPOSES OF A TENANT'S QUALIFYING FOR PROTECTED STATUS AS DISABLED PURSUANT TO ORDINANCE SECTION 37.9(i)(1)(B); AND TO REFLECT THE CORRECT MONTH FOR CALCULATING THE ANNUAL ALLOWABLE RENT INCREASE.

You may either comment at the Public Hearing and/or submit written comments. If you would like to submit written comments, it is requested that they be received at the Department no later than **5 p.m. on Tuesday, June 3, 2008**, so that the Commissioners can be mailed your comments and review them prior to the hearing. Written comments may also be submitted at the hearing. Please submit 12 copies of your comments in order to facilitate their distribution. You will be able to address the Commissioners during the public comment period at the hearing.





NOTICE OF PUBLIC HEARING, RULES SECTIONS 12.14 & 1.12

**Note:** Additions in underline; deletions in strikethrough.

**Section 12.14 Evictions under Section 37.9(a)(8)**

(d) A tenant is disabled under Ordinance Section 37.9(i)(1)(B)(i) if the tenant meets the standard for blindness or disability under the federal Supplemental Security Income/California State Supplemental Program (SSI/SSP). In determining whether a tenant is disabled ~~as defined under Section 37.9(i)(1)(B)(i)~~, a finder of fact shall consider relevant evidence, including:

- (1) findings by any government entity concerning a disability;
- (2) testimony concerning the disability; and
- (3) medical evidence concerning the disability.

**Section 1.12 Annual Rent Increase**

(Amended February 21, 1984; effective March 1, 1984; amended December 8, 1992; Subsection (b) amended August 20, 1996.

(a) Where a landlord is entitled to an annual rent increase to be effective from December 8, 1992 through February 28, 1993, the allowable amount of increase is 1.6%. Thereafter, the annual allowable increase determined by the Board shall become effective each March 1, and shall be no more than 60% of the percentage increase in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region as published by the U.S. Department of Labor for the 12 month period ending ~~November 30~~ October 31. In determining the allowable percentage rent increase, numbers of .04 and below shall be rounded down to the nearest tenth decimal place, and numbers of .05 and above shall be rounded up to the nearest tenth decimal place. In no event, however, shall the allowable annual increase be greater than seven percent (7%). The Rent Board shall publish the annual allowable increase amount on or about January 1. The published increase shall be determined only once for each 12 month period and shall remain in effect until the next scheduled recalculation.





DAVID GRUBER  
PRESIDENT

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

Tuesday, June 10, 2008 at 6:30 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSLER  
BARTHOLOMEW MURPHY

I. Call to Order

DOCUMENTS DEPT.

President Gruber called the meeting to order at 6:35 p.m.

JUN 20 2008

II. Roll Call

SAN FRANCISCO  
PUBLIC LIBRARY

Commissioners Present: Beard; Gruber; Henderson; Hurley;  
Marshall; Mosser.  
Commissioners not Present: Justman; Mosbrucker.  
Staff Present: Gartzman; Koomas; Wolf.

Commissioner Murphy appeared on the record at 6:38 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of May 20, 2008.  
(Henderson/Hurley: 5-0)

IV. Consideration of Appeals

A. 1059 Leavenworth #12

AL080044

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,700.00 due to habitability problems in the subject unit. The landlord failed to appear at the hearing and claims on appeal not to have received notice of the hearing, attaching the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing.  
(Henderson/Gruber: 5-0)

B. 1616 Taylor #7

AT080047



The landlord's petition for approval of utility passthroughs to 4 of 11 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Murphy/Marshall: 5-0)

C. 405 Serrano 5D

AT080048

The landlord's petition seeking approval of utility passthroughs in this multi-unit complex was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Murphy/Marshall: 5-0)

D. 2070 Pacific #501

AT080050

The tenant's appeal was filed ten days late because she was out of the country at the time the decision was issued.

MSC: To find good cause for the late filing of the appeal.  
(Marshall/Henderson: 5-0)

The landlord's petition for approval of utility passthroughs for 8 of 29 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Henderson: 5-0)

E. 7A Gonzalez Dr.

AT080045

The tenant's appeal was filed four days late because the tenant allegedly did not understand the time frame for filing and feels that time must be allotted for the receipt of mail.

MSC: To find good cause for the late filing of the appeal.  
(Murphy/Marshall: 5-0)

The landlord's petition for approval of utility passthroughs for 5 of 16 units was granted. One tenant appeals on the grounds that: the increase is discriminatory, since it is not being assessed to all tenants; the laundry room is dirty and the washers and dryers are frequently inoperable; the cost of the laundry room machines has gone up and should be covered by the annual rent increase; the





landlord does not pay for the utilities to her unit; and there are habitability defects on the premises.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

F. 520 Holloway Ave.

AL080049

The landlords' Petition for Extension of Time to do Capital Improvement Work was denied because the landlords failed to obtain all necessary permits prior to issuing the notice to vacate. The landlords appeal, asserting that they received assurances from a Rent Board staff member that their petition was properly prepared prior to their filing it.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record to vacate the decision and grant the petition pursuant to Rules and Regulations Section 2.18. (Henderson/Murphy: 5-0)

G. 2040 Franklin #708

AL080046

The landlord's Petition for Extension of Time to do Capital Improvement Work was denied because the ALJ found the landlord's time estimate for completion of the project to be unreasonable. The landlord appeals, maintaining that: the ALJ impermissibly relied on post-hearing submissions from the tenant and the tenant's two witnesses, who had not seen the subject unit; the tenant's post-hearing submissions should not have been considered by the ALJ; the tenant failed to provide evidence requested by the ALJ; and evidence provided by licensed professionals who had been inside the unit should have been given more weight.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing. Evidence already in the record does not have to be re-submitted; any additional evidence must be submitted no later than five days prior to the remand hearing. Any witnesses must be present at the hearing or available for phone testimony. (Marshall/Henderson: 5-0)

H. 221A Douglass St.

AL080051

The landlords' Petition for Extension of Time to do Capital Improvement Work was denied because the landlord did not have all the necessary permits prior to issuing the Notice to Vacate. The landlord appeals, explaining that: the landlords had the only permit required to commence the work; the electrical and plumbing permits were approved, but had not been picked up by the contractor;



the tenants were not prejudiced in any way and were given more notice than was legally necessary; and the landlords are trying in good faith to complete the work as expeditiously as possible.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record to vacate the decision and grant the petition pursuant to Rules and Regulations Section 2.18.  
(Murphy/Gruber: 5-0)

I. 272 Downey St. #1

AL080052

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,437.50 due to a broken light fixture and exposed wiring in the kitchen and the landlord's failure to maintain the common areas of the property. On appeal, the landlord claims that: the tenant took down the light fixtures in the unit and replaced them with his own fixtures; and the garbage area of the property is not dirty.

MSC: To deny the appeal. (Marshall/Henderson: 5-0)

J. 264 B Carl St.

AL080053

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$13,634.33. On appeal, the landlord asserts that: the storage space is being used for commercial purposes; the space is in a separate building and was never represented as part of the tenant's housing services; and the tenant was not truthful at the hearing.

MSC: To deny the appeal. (Marshall/Henderson: 5-0)

#### V. Public Hearing

Proposed Amendments to Rules Sections 12.14(d) Regarding Disability Determinations Pursuant to Ordinance §37.9(i)(1)(B)(i) and Rules §1.12 Regarding Calculation of the Allowable Annual Rent Increase

The Board convened a Public Hearing at 7:10 p.m. on proposed amendments to Rules Sections 12.14 and 1.12 to clarify that there is no "means test" for purposes of a tenant's qualifying for protected status as disabled and to reflect the correct month for calculating the allowable annual rent increase. No one spoke on the proposed change to Rules Section 1.12. Four persons addressed the Board regarding the proposed amendments to Section 12.14 as follows below:



1. Victoria Tetter of the Independent Living Resource Center expressed her support for the proposed amendments to Rules §12.14. She told the Board that there shouldn't be a means test for disability, since the other categories of protected tenants do not have one. She then explained the differences between several of the welfare programs available to the disabled.

2. Jamie Rush, Housing Attorney for the Aids Legal Referral Panel, read a statement in support of the proposed amendments, which Commissioner Henderson asked to be incorporated into the record to justify passage of the changes:

ALRP serves people living with HIV/AIDS without regard to income or means because we recognize a need that is a consequence of the disease itself and its myriad associated health problems. People living with HIV/AIDS and other disabilities face serious challenges regardless of the amount or source of their income.

Lawmakers have responded to these challenges by creating protections for people with disabilities. In the case of OMI evictions, the Supervisors determined that those who would face the most severe consequences as a result of such evictions are long-term disabled and elderly tenants, for whom the loss of housing would be likely to have a catastrophic impact. Because of the difficulties inherent in having to search for new housing and undertake a move, these tenants are at especially high risk of ending up homeless or in temporary and substandard housing. And this risk is present for folks with varying levels and sources of benefits. For my clients living with HIV/AIDS, access to safe, stable housing is critical to their ability to maintain their health, and I can attest to the fact that my clients who end up in substandard housing or in shelters experience a significant decline in their condition.

While responding to the needs of disabled and elderly tenants, the Supervisors made the decision not to use a broad definition of disability like the ADD definition. Instead, they chose to employ the more restrictive disability standard used for Social Security benefits. It seems clear that this decision was meant only to limit the definition as it relates to the disabling condition or diagnosis, and not to impose further, non-disability-related eligibility requirements, such as a means test.

The Supervisors could not have intended to create a test under which two people could have identical health conditions, identical durations of tenancy, and identical monthly incomes, but one is not protected because his income comes from SSDI instead of SSI.

The language used to define disability for purposes of both SSI and SSDI is quite explicit: "a . . . physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."

What possible reason could there be to deny protection to someone who meets this definition – someone diagnosed with an impairment that is expected to result in death – for the mere reason that she has a work history that qualifies her for SSDI benefits?



This issue is going to continue to arise until the definition is clarified. As evidenced by the declaratory relief cases, as well as numerous matters that have come before the Rent Board, the current procedure is to decide the issue on a case-by-case basis. For a disabled tenant, the stress of having to go through this prolonged process, all the while being unsure whether he is going to be forced out of his home, can have a serious detrimental impact. Clarifying the definition with this amendment will save the time and resources of attorneys, the court, and the Rent Board; but more importantly it will relieve disabled tenants of at least some of the stress and anxiety associated with this inherently traumatic process.

3. Attorney Solvejg Rose reminded the Commissioners that it was she who had initially requested that the amendments be made, and she would not repeat her comments from previous meetings. Ms. Rose expressed her satisfaction that the proposed amendments accomplish the intent of the Board of Supervisors.

4. Ken Bass told the Board that he is a tenant who is facing the situation contemplated by the proposed amendments. Mr. Bass receives SSDI payments that make him ineligible for SSI, and he was not considered to be disabled as a result. Mr. Bass reported that he had to spend a great deal of money to prove his disabled status.

The Public Hearing concluded at 7:22 p.m. The Board then voted as follows:

MSC: To adopt the proposed amendments to Rules Section 12.14.  
(Marshall/Henderson: 5-0)

MSC: To adopt the proposed amendment to Rules Section 1.12.  
(Henderson/Marshall: 5-0)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. Several articles from CNN.com, the S.F. Chronicle, the San Francisco Daily Journal, and the New York Times.

B. The office workload statistics for the month of April.

C. The Court of Appeal Decision in the case of Baychester Shopping Center v. S.F. Rent Board (A118684), regarding successor liability.

#### VII. Director's Report

Executive Director Wolf introduced new Citizens Complaint Officer Joey Koomas to the Commissioners. She informed the Board that the Department did very well





at the hearings before the Budget Committee of the Board of Supervisors: Committee Chair McGoldrick restored the Citizens Complaint Officer position that had been deleted. Ms. Wolf also informed the Board that several staff members would be volunteering to assist with the additional marriage ceremonies that will be held at City Hall during the weeks of June 16<sup>th</sup> and 23<sup>rd</sup>. Senior Administrative Law Judge Sandy Gartzman told the Board that an amendment to the Ordinance allowing for a passthrough of the increase in water rates will be going before the Housing and Land Use Committee of the Board of Supervisors on Monday, June 30<sup>th</sup>.

VIII. Remarks from the Public

Landlord Dee Rich of 272 Downey Street (AL080052) told the Board that the tenant took the fixtures in the unit down without her knowledge and also painted the flat red. Ms. Rich said that she spent \$5,000 re-doing the flat before the tenant moved in. She believes that she has ten reasons to evict the tenant, but would rather work it out. Now, according to Ms. Rich, this may no longer be possible.

IX. Calendar Items

June 17, 2008 – NO MEETING

June 24, 2008

7 appeal considerations

X. Adjournment

President Gruber adjourned the meeting at 7:40 p.m.





DAVID GRUBER  
PRESIDENT

NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

GAVIN NEWSOM  
MAYOR

DILENE WOLF  
EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,  
June 24, 2008  
25 Van Ness Avenue, #70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

AGENDA

06-20-08A10:51 RCVD

I. Call to Order

II. Roll Call

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III. Approval of the Minutes

JUN 20 2008

IV. Remarks from the Public

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PUBLIC LIBRARY

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 1351 Mason #3

AT080055

One tenant appeals the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

B. 1333 Gough, Penthouse A

AT080060

The tenant appeals the decision determining that he is not a "Tenant in Occupancy" pursuant to Rules §1.21.

C. 2525 Judah St. #201

AL080054

The landlord appeals the decision granting a claim of unlawful rent increases because the tenant rents three units in the building.

D. 6112 California #2

AL080056

The landlord appeals the decision granting claims of decreased housing services.

E. 407 Randolph St.

AL090059





The landlord appeals the decision finding that a rent increase is not warranted under Costa-Hawkins because the tenants still permanently reside at the subject premises.

F. 400 Hyde #204

AL080057 & AT080058

The landlord and tenant appeal the decision determining that the subject unit is not the tenant's principal place of residence but finding a notice of rent increase null and void.

G. 543 Buena Vista West, 1, 2, & 7

AL080061

The landlord appeals the decision granting claims of decreased housing services due to an inoperable elevator.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

X. Calendar Items

XI. Adjournment





## **ACCESSIBLE MEETING POLICY**

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會議提供翻譯服務，聲感增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4603。

Se pueden obtener servicios de traduccion, ampliacion de sonida, u otras formas de presentacion si se solicitan por lo menos 72 horas antes de la reunion. Llame al 252-4603 para hacer su solicitud.

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## **Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement**

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Timothy Lee has been designated to coordinate this agency's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided under the Act, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845.

## **Know Your Rights Under the Sunshine Ordinance**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlet Place, Room 244, San Francisco, CA 94102 at 554-7724.







DAVID GRUBER  
PRESIDENT

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

Tuesday, June 24, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

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I. Call to Order

President Gruber called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Beard; Gruber; Henderson; Hurley;  
Mosbrucker.  
Commissioners not Present: Justman; Mosser; Murphy.  
Staff Present: Lee; Wolf.

Commissioner Marshall appeared on the record at 6:10 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of June 10, 2008.  
(Mosbrucker/Henderson: 5-0)

IV. Remarks from the Public

A. Tenant Robert Hughes of 543 Buena Vista West (AL080061) told the Commissioners that there has been no working elevator in the building since October. The landlord stated that the elevator was repaired in November, and that he is just waiting for the State to certify the work. Mr. Hughes informed the Board that three tenants from the building with medical problems were present at the meeting.

B. Attorney Steven Littman, representing the landlord at 407 Randolph (AL090059), said that the plaintiff would be willing to have the case remanded on the issues of Rules §1.21 and Costa-Hawkins. Mr. Littman also asked that the Board address the issue of permanent residence, as he believes that the filing of a Homeowner's Exemption should create a presumption of principal place of



residence, and the Board should adopt a conclusive rule on the effect of such a filing.

C. Tenant Gary Near of 1408 California (AT080018) told the Board that the Minutes of May 20<sup>th</sup> are "fundamentally inaccurate" as to his comments as follows: his motion to disqualify President Gruber from consideration of his appeal was based on a financial relationship with his landlord, rather than personal; he referred to on-going investigations of his landlord by other City agencies, which he believes are likely to lead to a federal investigation; and, in the summary of the case, there is no mention of the Board's ruling on his request for President Gruber's disqualification. Mr. Near said that his remarks would be unnecessary if the Board would record its meetings.

D. Richard Dearborn spoke on behalf of the tenant at 2525 Judah (AL080054), who he has known for a long time. Mr. Dearborn attested to the fact that the tenant uses all three of the units he rents as his principal place of residence, and said that the landlord's statement is "filled with inaccuracies."

E. Robert Valverdie also spoke on behalf of the tenant at 2525 Judah, saying that the law is clear and the landlord's appeal is frivolous. Mr. Valverdie said that he has known the tenant for 30 – 40 years, and didn't think there was a problem with using three apartments as one residence.

F. Tenant Nushin Mavaddat of 2525 Judah said that the Decision of the Administrative Law Judge (ALJ) is correct and should be upheld. Mr. Mavaddat told the Board that he provided ample evidence that the units have constituted a single home for himself and his family for over twenty years, and that the owner leased the apartments to him with full knowledge. He said that it is not true that there is commercial use, nor that the units are used as an office for employees, or a religious meeting place.

#### V. Consideration of Appeals

A. 1351 Mason #3

AT080055

The tenants' appeal was filed approximately 1-1/2 months late because the tenants are monolingual Chinese speakers.

MSC: To find good cause for the late filing of the appeal.  
(Henderson/Marshall: 5-0)

The landlord's petition seeking rent increases to 5 of 12 units was granted. The tenants in one unit appeal the decision on the grounds of financial hardship.



MSC: To accept the appeal and remand the case for a hearing on the tenants' claim of financial hardship. (Henderson/Marshall: 5-0)

B. 1333 Gough, Penthouse A

AT080060

The landlord's petition for a determination pursuant to Rules §1.21 was granted, as the Administrative Law Judge (ALJ) found that the tenant uses the subject unit for commercial purposes only. The tenant failed to attend the hearing. On appeal, the tenant claims not to have received the Notice of Hearing, as he was out of the country.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a new hearing. (Marshall/Henderson: 4-1; Gruber dissenting)

C. 2525 Judah St. #201

AL080054

The tenant's petition alleging unlawful rent increases was granted because the ALJ found that the tenant occupies two proximate units in the building as his principal place of residence and his mother occupies a third, for which the tenant pays rent. On appeal, the landlord claims that: the tenant's use of three units is contrary to the public policy goals of the Rent Ordinance; one of the units is being used as an office, meeting space and for guests, rather than housing, and there is no commercial rent control; it is unfair that owners are limited to one unit for purposes of owner-occupancy eviction, while tenants can receive the benefit of rent control in more than one unit; and the unit occupied by the tenant's mother should qualify for a Costa-Hawkins or Rules §6.14 increase.

MSC: To deny the appeal. (Marshall/Henderson: 4-1; Gruber dissenting)

D. 6112 California #2

AL080056

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$2,800.00 due to habitability problems on the subject premises. On appeal, the landlord claims that: the back door cannot be locked, as it would be a violation of the building code; and the heater emitted a foul odor because the tenant failed to clean it, as required by his lease.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record on the issue of inadequate security only, and to grant a rent reduction for that condition in the amount of \$50.00 per month from August 28, 2003 until January



1, 2007, and \$25.00 per month from that date forward.  
(Marshall/Hurley: 4-1; Gruber dissenting)

E. 407 Randolph St.

AL080059

The landlord's petition seeking a determination as to whether a rent increase is warranted pursuant to Costa-Hawkins was denied because the ALJ found that the tenants still permanently reside on a part-time basis at the subject unit. On appeal, the landlord maintains that: the original tenants occupy the subject premises no more than 1-2 days per week; the current occupant moved in after January 1, 1996; the fact that the tenants take a Homeowner's Exemption on another property creates a presumption that the subject unit is not their principal place of residence; the decision defeats the purpose of Costa-Hawkins; and the case should be remanded for a determination under Rules §1.21.

MSC: To accept the appeal and remand the case to allow the landlord to amend the petition and add a request for a determination pursuant to Rules §1.21; a remand hearing will then be scheduled before the Administrative Law Judge.  
(Hurley/Gruber: 4-1; Marshall dissenting)

F. 400 Hyde #204

AL080057 & AT080058

The tenant's petition requesting that the Rent Board determine his lawful rent was granted in part and denied in part. The Administrative Law Judge found that while a rent increase from \$748.65 to \$1,150.00 was warranted pursuant to Costa-Hawkins, the rent increase notice was null and void because it failed to name the tenant petitioner. The tenant appeals, asserting that: on his visa application, he is registered at his partner's unit in Amsterdam because it is a requirement in order to remain longer than the three months allowed on a tourist visa; he is temporarily away pursuing language studies; the landlord has known of his situation and yet cashed his rent checks for over two years; and he has never terminated his tenancy at the subject unit. The landlord also appeals that portion of the decision voiding the rent increase on the grounds that: original occupants who no longer permanently reside in the unit do not need to be served with the notice of rent increase, especially as the Rent Board's interpretation of the "no longer permanently resides" standard of Costa-Hawkins assumes that the tenant has severed his ties to the unit; and the current occupant of the unit is not a subtenant but, rather, an assignee, who now has privity of estate with the landlord and is the only party affected by the change in terms of tenancy.

MSC: To deny both appeals. (Hurley/Gruber: 4-1;  
Marshall dissenting)





G. 543 Buena Vista West, 1, 2 & 7

AL080061

Three tenant petitions alleging decreased housing services due to a broken elevator were granted and the landlord was found liable to the tenants for rent reductions valued at 15% of the tenants' base rents during the time the elevator has been inoperable. On appeal, the landlord claims that: the ALJ is biased and he did not receive a fair hearing; the San Francisco Department of Building Inspection does not have jurisdiction over elevators; he made diligent efforts over a four-month period to locate an elevator company willing to make the needed repairs; there were inconsistencies in the testimony offered by one of the tenants, which was at odds with the observations of the landlord; the rent reduction is excessive for a temporary inconvenience; the landlord was trying to avoid a large passthrough to the tenants by not installing a new elevator; and the Rent Board does not have the authority to impose a punitive penalty.

MSC: To deny the appeal. (Henderson/Marshall: 5-0)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received two articles from BeyondChron and one from the New York Times.

#### VII. Director's Report

Executive Director Wolf told the Board that three measures have been referred to Committee by the Board of Supervisors for possible inclusion on the November ballot: an anti-landlord harassment measure; inclusion of families with children as a protected class for purposes of OMI eviction; and bringing owner-occupied duplexes under the City's condominium conversion law. Ms. Wolf also informed the Commissioners that she would be on vacation from June 30<sup>th</sup> through July 18<sup>th</sup>.

#### IV. Remarks from the Public (cont.)

G. Jean-Pierre Guittard asked for clarification regarding the disability standard that is used for determining protected status.

#### VIII. New Business

Commissioner Gruber expressed his desire to see more specific credibility determinations in ALJ decisions. Commissioner Hurley wondered if it would reduce the number of no-shows at hearings if staff would call parties prior to hearings.



IX. Calendar Items

July 1<sup>st</sup> & 8<sup>th</sup>, 2008 – NO MEETINGS

July 15, 2008

5 appeal considerations

New Business: Petitions for Extension of Time

X. Adjournment

President Gruber adjourned the meeting at 7:45 p.m.





DAVID GRUBER  
PRESIDENT

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

Tuesday, 6:00 p.m.,  
July 15, 2008  
25 Van Ness Avenue, #70, Lower Level

**AGENDA**

07-07-08A11:24 RCVD

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BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY I.

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

A. 3330 Pierce #103 & 107

AT080068 & -69

Two tenants appeal the decision approving utility passthroughs.

B. 770 - 12<sup>th</sup> Ave.

AT080064

The tenants appeal the decision granting a rent increase based on increased operating expenses.

C. 221 - 27<sup>th</sup> Ave. #1

AT080065

The tenant appeals the decision finding that a rent increase is warranted under Costa-Hawkins.

D. 27 Card Alley

AT080067

The tenants appeal the decision granting claims of unlawful rent increases and decreased housing services.



E. 3536 – 17<sup>th</sup> St.

AT080066

The subtenant appeals the decision denying a claim that he paid a disproportional share of the rent pursuant to Rules §6.15C(3).

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

Petitions for Extension of Time to do Capital Improvement Work (Rules and Regulations Section 12.15)

X. Calendar Items

XI. Adjournment







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DAVID GRUBER  
PRESIDENT

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

Tuesday, July 15, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

DOCUMENTS DEPT.

AUG 15 2008

SAN FRANCISCO  
PUBLIC LIBRARY

I. Call to Order

President Gruber called the meeting to order at 6:00 p.m.

II. Roll Call

Commissioners Present: Beard; Gruber; Henderson; Hurley;  
Justman; Mosbrucker; Mosser.  
Commissioners not Present: Marshall.  
Staff Present: Gartzman; Lee.

Commissioner Murphy appeared on the record at 6:22 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of June 24, 2008.  
(Hurley/Henderson: 5-0)

IV. Remarks from the Public

A. Greg Blaine, the landlord's representative for 3330 Pierce Street (AT080068 and AT080069), said that the capital improvement project undertaken in 2007 that was referenced in the tenants' appeals was small and did not require a lot of electricity because it involved mainly manual tasks and very little actual construction. He pointed out that utility costs for the building decreased from 2006 to 2007. He also explained that fluctuations in utility usage in 2007 are probably due to the use of thermostats which regulate the heat.





V. Consideration of Appeals

A. 3330 Pierce #103 & 107

AT080068 & -69

The landlord's petition seeking approval of utility passthroughs for 10 of 21 units was granted. The tenants in two units appeal the decision on the grounds that: the PG&E bills were inflated due to extra electricity used during a capital improvement project in the building; there are too many variations for steam heat and common area lighting in the comparison year; and PG&E has not agreed that the utilities at issue are on the same meters.

MSC: To deny the appeal. (Hurley/Mosbrucker: 5-0)

B. 770 – 12<sup>th</sup> Ave.

AT080064

The landlords' petition for a rent increase based on increased operating and maintenance expenses for one of two units was granted, but deferred due to the landlords' failure to make requested repairs. The tenants appeal the decision, asserting that: there should be no insurance expenses, since the landlord had previously said that they were uninsured; the tenants were not provided with a copy of the documentary evidence supporting the expenses and do not find them to be credible; the repairs have not been completed, which should further postpone the rent increase; and the rent increase is retaliatory because the tenants had filed a petition for decreased housing services.

MSC: To deny the appeal. (Hurley/Gruber: 5-0)

C. 221 – 27<sup>th</sup> Ave. #1

AT080065

The landlord's petition seeking a determination as to whether a rent increase is warranted pursuant to Costa-Hawkins was granted, as the Administrative Law Judge found that the tenant is a subtenant who did not reside at the subject unit prior to January 1, 1996. The tenant appeals, maintaining that the landlord knew of his occupancy in early 1996 but failed to give him a 6.14 notice within the required period of time.

MSC: To deny the appeal. (Hurley/Gruber: 4-1; Mosbrucker dissenting)

D. 27 Card Alley #3

AT080067

The tenants' petition alleging unlawful rent increases and substantial decreases in housing services was granted and the landlord was found liable to the tenants in the amount of \$7,214.54 for rent overpayments and \$1,116.32 due to



habitability defects on the premises. The tenants appeal, claiming that: the rent overpayment calculations are incorrect; the decision is in error regarding the April 1982 rent and proper anniversary date; the notices of rent increase were defective and should be null and void; and oral and constructive notice of substandard conditions should be considered long-term verifiable notice.

MSC: To deny the appeal. (Hurley/Mosbrucker: 5-0)

E. 3536 – 17<sup>th</sup> St.

AT080066

The subtenant's petition alleging that he paid a disproportionate share of the rent pursuant to Rules §6.15C(3) was denied. On appeal, the subtenant claims that: the square footage division of the flat was disregarded, resulting in an incorrect division of the rent; the utility costs also should not have been divided in half, since the Master Tenant had exclusive use of more of the space; the supplies and furnishings provided by the Master Tenant were over-stated, and should have been offset against those provided by the tenant; and the cleaning costs were disproportionate and not proved.

MSC: To deny the appeal. (Mosbrucker/Justman: 4-1; Henderson dissenting)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communication:

A. Monthly Workload Statistics for May 2008

#### IV. Remarks from the Public (cont.)

B. Mukesh Budgujar, the landlord of 770-772 12<sup>th</sup> Avenue (AT080064), told the Commissioners that he appreciated the Board's appeal consideration process and also the decision they made on the tenants' appeal, but he had hoped the Commissioners would pay more attention to his submission because he spent a lot of time preparing it.

C. Marc Breindel, the former subtenant in unit 3536 17<sup>th</sup> Street, said that the ALJ was incorrect about the facts of the prior case that she cited in her Memorandum. He also does not agree with the ALJ that the master tenant had the right under the law to charge him 50% of the rent because the master tenant had more than twice as much benefit as the subtenant. He stated that he was there because the decision was a "gross inequity" and he believes in the law.





VII. New Business

Petitions for Extension of Time (Rules and Regulations Section 12.15(e))

The Board discussed the procedural requirements of Rules and Regulations Section 12.15(e)(1). Senior Administrative Law Judges Sandy Gartzman and Tim Lee explained that the ALJs routinely deny Petitions for Extension of Time where the landlord does not obtain all the necessary permits before filing the petition, even where the landlord obtains all the necessary permits before the hearing. The Commissioners discussed a possible exception to this interpretation where the landlord obtains all the necessary permits before the hearing *and* before serving the tenant with a notice to vacate. Commissioner Murphy reminded the Board that he and Commissioner Marshall also wanted to discuss possible amendments to Sections 12.15(e) and 12.16 that would require the landlord to pay the rent differential between the vacated unit and the replacement unit where the landlord's Petition for Extension of Time is granted. The Board continued this discussion to the next meeting on August 19, 2008.

VIII. Calendar Items

July 22<sup>nd</sup> & July 29<sup>th</sup>, 2008 – NO MEETINGS

August 5<sup>th</sup> & 12<sup>th</sup>, 2008 – NO MEETINGS

August 19, 2008

8 appeal considerations

Old Business: Petitions for Extension of Time

IX. Adjournment

President Gruber adjourned the meeting at 7:01 p.m.





DAVID GRUBER  
PRESIDENT

**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,

August 19, 2008

25 Van Ness Avenue, #70, Lower Level

BROOKS BEARD  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSLER  
BARTHOLOMEW MURPHY

**AGENDA**

08-15-08A10:29 RCVD

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AUG 15 2008

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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

A. 339 Oak St. AT080076

One tenant appeals the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

B. 550 Battery St. #2004 AT080077

The tenant in one unit appeals the decision approving utility passthroughs.

C. 5147 - 3<sup>rd</sup> St. AT080075

The tenant appeals the dismissal of her petitions alleging decreased housing services and unlawful rent increase due to her failure to appear at the hearing.

D. 60 Parkridge Dr. #10 AT080070

The tenant appeals the decision determining that there had been no unlawful rent increases.





E. 866 Post St. #6

AT080071

One tenant appeals the decision approving utility passthroughs.

F. 1516 Larkin St. #9 & #4

AT080072 & -78

The tenants in two units appeal the decision certifying capital improvement costs.

G. 594-596 – 34<sup>th</sup> Ave.

AL080073

The landlord appeals the decision granting claims of decreased housing services.

H. 728 Diamond St.

AL080074

The landlord appeals the decision granting a claim of decreased housing services.

VI. Communications

VII. Director's Report

VIII. Old Business

Petitions for Extension of Time to do Capital Improvement Work  
(Rules and Regulations Section 12.15)

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.





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(5/04) snstsh Board/accmgt





City and County of San Francisco

Residential Rent Stabilization  
and Arbitration Board



DAVID GRUBER  
PRESIDENT

MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

Tuesday, August 19, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

Call to Order

President Gruber called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Beard; Crow; Gruber; Hurley; Mosbrucker;  
Mosser.

Commissioners not Present: Henderson; Justman; Marshall; Murphy.

Staff Present: Gartzman; Wolf.

Commissioner Crow was welcomed to his first Board meeting.

III. Approval of the Minutes

DOCUMENTS DEPT.

MSC: To approve the Minutes of July 15, 2008.  
(Hurley/Mosbrucker: 5-0)

SEP 12 2008

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IV. Remarks from the Public

A. Golden Gateway tenant Brian Browne spoke in support of Regina Macias' appeal (AT080077). Mr. Browne said that he does not understand Rules §6.16 because he was promised utilities in his rent when he moved in. The new landlord took over in 1990 or 1991 and passed through seismic work in 2002. The landlord's attorney said that it would be confiscatory if Golden Gateway couldn't go back to a 1980 base year for their utility passthrough, but Mr. Browne believes that they are the only landlord in the City who deducts the 1980 bill from the current bill. Mr. Browne feels that a hearing should be held to look at the landlord's surveys because he has received utility passthroughs in excess of 14% of his rent.

B. Tenant Regina Macias of 550 Battery #2004 told the Board that the Golden Gateway complex was originally HUD housing that was affordable for





working individuals. Ms. Macias believes that the seismic upgrade costs should have been part of the purchase price for the building. She said the decision uses an incorrect ownership date; the 1983 base year is unfair and not indexed for inflation; utilities are included in her lease; and long-term renters are being overcharged and pushed out.

C. Golden Gateway tenant Joseph Jedekin spoke in support of the Macias appeal. He said that the issue is contractual; the landlord shouldn't be permitted to go back to 1980 for passthroughs; and the landlord should be held to a 1991 base year, which is when they became owners of the property.

D. Golden Gateway tenant Robert Coleman voiced his enthusiasm for Commissioner Crow's appointment to the Board, commending him for his high standards and ethics. Mr. Coleman also spoke in support of the Macias appeal. He said that the Regulation seeks to discourage exaggerated results, but that it is impossible to tell without running the numbers. Mr. Coleman told the Board that the landlord wasn't compelled to submit the underlying documents, and that the result of this appeal consideration will affect many tenants besides the appellant.

E. Golden Gateway tenant Ernestine Weiss said that she has lived in the complex since 1987. Ms. Weiss believes that this landlord is the "worst criminal thief in the history of San Francisco." She expressed her concerns regarding "hotelization" and told the Board that there is no accountability; her contract provides for utilities; and the landlord shouldn't be able to go back for years prior to their ownership. Ms. Weiss concluded by reminding the Board that they are here to "do justice."

F. Tenant appellant Valerie Howard Holman of 51247 – 3<sup>rd</sup> St. (AT080075) told the Board that her landlord doesn't do anything. Ms. Holman's train was held up in the tunnel and she missed her hearing. She apologized to the Board, but explained that she was "fighting for her rights." Ms. Holman feels it is unfair to pay rent but get nothing.

V. Consideration of Appeals

A. 339 Oak St. #339

AT080076

The landlord's petition for rent increases to 8 of 12 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Mosbrucker/Hurley: 5-0)

B. 550 Battery St. #2004

AT080077



The landlord's petition for utility passthroughs for 5 of 794 units was granted. The tenant in one unit appeals, alleging that: the date the current landlords acquired ownership of the property is incorrectly stated in the decision; the present landlord has no knowledge of events in the base year; and this inaccuracy calls into question the veracity of the entire petition.

MSC: To recuse Commissioner Crow from consideration of this appeal.  
(Mosbrucker/Hurley: 5-0)

MSC: To deny the appeal. (Mosbrucker/Hurley: 4-0)

C. 5147 – 3<sup>rd</sup> St.

AT080075

The tenant's petitions were dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims that there was a delay on public transportation; that she is suffering from depression; and that her brother was recently deceased.

MSC: To accept the appeal and remand the case for a new hearing.  
(Mosbrucker/Hurley: 5-0)

D. 60 Parkridge Dr. #10

AT080070

The tenant filed a petition requesting a determination of his lawful rent. The Administrative Law Judge found that there had been no unlawful rent increases, as the landlord's "accounting" of water and garbage charges was not a demand for payment. The tenant appeals the decision, asserting that: the "accounting" is actually a bill for water and garbage charges, which were included in his lease; and these charges constitute an unlawful rent increase.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a determination as to whether the water and garbage charges constitute an unlawful increase in rent; a hearing will be held only if necessary.  
(Mosbrucker/Crow: 5-0)

E. 866 Post St. #6

AT080071

The tenant's appeal was filed one day after the extension he had been granted expired.

MSC: To find good cause for the late filing of the appeal.  
(Mosbrucker/Crow: 5-0)



The landlord's petition for approval of utility passthroughs for 7 of 12 units was granted. One tenant appeals on the grounds that: a hearing was not held in the case; the landlord misrepresented the facts concerning unnecessary increases in lighting and heating costs; if the new lighting was really cost-effective, the tenants should not have to pay utility passthroughs; and the gas heaters do not work well.

MSC: To deny the appeal. (Mosbrucker/Crow: 5-0)

F. 1516 Larkin St. #9 & #4

AT080072 & -78

The landlord's petition for certification of capital improvement costs for 13 of 14 units was granted. The tenants in two units appeal the decision on the grounds of financial hardship.

MSC: To accept the appeals the remand the cases for hearings on the tenants' claims of financial hardship. (Mosbrucker/Hurley: 5-0)

G. 594-596 – 34<sup>th</sup> Ave.

AL080073

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$2,090.00. The landlord failed to appear at the properly noticed hearing and provides documentation that he was ill on the day of the hearing.

MSC: To accept the appeal and remand the case for a new hearing. (Mosbrucker/Hurley: 5-0)

H. 728 Diamond St.

AL080074

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$266.50 due to the presence of rats in the back yard. On appeal, the landlord claims that the rent reduction of \$50.00 per month is excessive and disproportionate to the actual loss of services.

MSC: To deny the appeal. (Mosbrucker/Crow: 5-0)

## VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A Pending Litigation Status Report from Senior Administrative Law Judge Tim Lee.





B. The office workload statistics for the month of June.

C. Several newspaper articles from the S.F. Chronicle, S.F. Apartment Magazine, BeyondChron and S.F. Weekly.

D. A notification of the new 60-day notice requirement for foreclosure evictions.

E. A copy of the "Tenant Harassment" legislation that will be going on the November ballot.

VII. Director's Report

Executive Director Wolf informed the Board as follows:

A. The outstanding billing issue with the Office of the City Attorney has been resolved.

B. The rental unit fee for fiscal year 2008-09 will be \$29.00.

C. As a follow-up to a concern voiced by Commissioner Hurley, a search of the database revealed that approximately 14 tenant petitions per year are dismissed and subsequently appealed. It therefore does not seem like a good use of staff resources to contact tenants and remind them of their upcoming hearing dates.

VIII. Old Business

Petitions for Extension of Time to do Capital Improvement Work  
(Rules and Regulations Section 12.15)

This issue was continued to the next meeting due to the absence of Commissioners Marshall and Murphy.

IX. Calendar Items

August 26<sup>th</sup>, September 2<sup>nd</sup> and 9<sup>th</sup> – NO MEETINGS

September 16, 2008

8 appeal considerations

Old Business: Petitions for Extension of Time

X. Adjournment

President Gruber adjourned the meeting at 7:26 p.m.



City and County of San Francisco

Residential Rent Stabilization  
and Arbitration Board



NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

GAVIN NEWSOM  
MAYOR

DAVID GRUBER  
PRESIDENT

Tuesday, 6:00 p.m.,  
September 16, 2008

DELENE WOLF  
EXECUTIVE DIRECTOR

25 Van Ness Avenue, #70, Lower Level

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN I.  
POLLY MARSHALL  
CAITLY MOSBRUCKER  
NEVEO MONSER II.  
BARTHOLOMEW MURPHY

AGENDA

09-12-08A10 19 REV0

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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 50 Chumasero 6J AT080080

One tenant appeals the decision approving utility passthroughs on the grounds of financial hardship.

B. 1201 - 8<sup>th</sup> Ave. #3 AL080082

The Master Tenant appeals the remand decision establishing a repayment plan for rent overpayments on the grounds of financial hardship.

C. 429 Bush #53 AT080090

The tenant appeals the remand decision denying his hardship appeal of a utility passthrough.

D. 217-221 Virginia Ave. AL080081

The landlord appeals the decision granting rent increases based on increased operating expenses but discontinuing a capital improvement passthrough.

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E. 1473 – 7<sup>th</sup> Ave.

AL080083

The landlord appeals the decision granting a claim of decreased housing services due to the loss of garage parking.

F. 3745 Divisadero #3

AT080084 & AL080085

The landlord and tenant appeal the decision granting claims of decreased housing services.

G. 665 Pine St. #1100

AL080086 & -87; AT080088

The tenant appeals the decision finding that a rent increase is warranted pursuant to Costa-Hawkins. The tenant also appeals the determinations in two other cases that he as Master Tenant charged two subtenants rents in excess of the amount that he was paying to the landlord.

H. 615 Burnett Ave. #1

AT080089

The tenant appeals the decision denying a claim of unlawful rent increase.

VI. Communications

VII. Director's Report

VIII. Old Business

Petitions for Extension of Time to do Capital Improvement Work  
(Rules and Regulations Section 12.15)

IV. Remarks from the Public (cont.)

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IX. New Business

X. Calendar Items

XI. Adjournment

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DAVID GRUBER  
PRESIDENT

**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

Tuesday, September 16, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVED MOSSE  
BARTHOLOMEW MURPHY

President Gruber called the meeting to order at 6:05 p.m.

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**II. Roll Call**

Commissioners Present: Gruber; Henderson; Hurley; Mosbrucker;  
Murphy; Mosser.  
Commissioners not Present: Beard; Mosser; Murphy.  
Staff Present: Lee; Wolf.

Commissioner Marshall appeared on the record at 6:10 p.m.; Commissioner  
Justman arrived at the meeting at 6:12 p.m.

**III. Approval of the Minutes**

MSC: To approve the Minutes of August 19, 2008.  
(Mosbrucker/Hurley: 4-0)

**IV. Remarks from the Public**

A. Allan White told the Board about an article in the Central City Extra  
alleging that the SRO Hotel Visitor Policy is not being followed. Mr. White  
contended that many police officers are unaware of the provisions of the Policy,  
which sometimes results in visitors being arrested for trespassing.

B. Tenant and Master Tenant Martin Eng of 665 Pine (AL080086 & -87;  
AT080088) told the Board that the subject unit is his only legal address and that  
the landlord has tried to evict him many times. Since he is registered to vote at  
that address, he would be committing fraud if he did not live there. Mr. Eng said  
that, if he can no longer afford to live in the unit, he would be homeless, even  
though he owns real estate. Mr. Eng also claimed that he provides a furnished  
apartment for his subtenants.





C. Master Tenant Raisa Akinshin (AL080082) informed the Board that her rent has been raised \$150.00 since the issuance of the decision. Ms. Akinshin said that she is "on the edge," since she is receiving less rent from her subtenant and that, if the Judge does not reconsider, she'll have to go someplace and she doesn't know where. Ms. Akinshin explained that she is not profiting from her subtenant but, rather, having a subtenant is the only way for her to hold on to the apartment.

V. Consideration of Appeals

A. 50 Chumasero 6J

AT080080

The landlord's petition for approval of utility passthroughs to 59 of 153 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Mosbrucker/Marshall: 5-0)

B. 1201 – 8<sup>th</sup> Ave. #3

AL080082

The Master Tenant's hardship appeal of the decision finding that the subtenant paid a disproportional share of the rent was accepted. In the remand decision, the Administrative Law Judge (ALJ) found that sufficient hardship existed to warrant the establishment of a payment plan for repayment of the \$2,018.85 in rent overpayments. On further appeal, the Master Tenant claims that the \$300.00 per month that the subtenant is allowed to deduct from her rent is too much, as she recently received a rent increase and there has been a slowdown in the job market.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to consider the Master Tenant's changed circumstances; a hearing will be held only if necessary. (Justman/Hurley: 5-0)

C. 429 Bush #53

AT080090

The tenant's hardship appeal of a utility passthrough was denied by the ALJ because it was found that the tenant pays only 18% of his income towards rent. On appeal, the tenant claims that the decision is in error, and his rent actually comprises 31.1% of his income.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to consider the tenant's new evidence. (Mosbrucker/Marshall: 5-0)



D. 217-221 Virginia Ave.

AL080081

The landlord's appeal was filed six days late because the landlord was unaware that the decision discontinued his capital improvement passthrough until a tenant brought it to his attention.

MSC: To find good cause for the late filing of the appeal.  
(Mosbrucker/Gruber: 5-0)

The landlord's petition for rent increases to four of six units based on increased operating expenses was granted, resulting in 7% base rent increases. However, because the landlord failed to include a previously certified capital improvement passthrough on the notices of rent increase, the ALJ deemed the passthrough discontinued. The landlord appeals that portion of the decision, arguing that: the tenants were on notice of the continuing nature of the capital improvement passthrough because it was itemized on the copies of the petition that the tenants all received; the landlord intentionally kept the base rent increases separate from the capital improvement passthrough; all of the affected tenants have continued to pay the capital improvement passthrough; and the landlord later clarified any possible misunderstanding with a letter to the tenants.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record to consider the landlord's new rent increase notices and their effective date. (Marshall/Hurley: 4-1; Mosbrucker dissenting)

E. 1473 – 7<sup>th</sup> Ave.

AL080083

The tenant's petition alleging decreased housing services due to the loss of garage parking was granted and the landlord was found liable to the tenant in the amount of \$180.00 per month. The landlord appeals, maintaining that the rent should be reduced by the value of the parking space at the inception of the tenancy plus allowable annual increases since that time.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing to consider additional evidence. (Hurley/Gruber: 3-2; Marshall, Mosbrucker dissenting)

F. 3745 Divisadero #3

AT080084 & -85

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$3,096.25. The landlord appeals the portion of the decision granting rent reductions for loss of



free laundry services, arguing that: the amount granted is excessive and barred by the Statute of Limitations; the tenant failed to provide an estoppel or otherwise provide notice regarding the laundry agreement he had with the prior landlord; the new machines constitute an increase in services; and the tenant is over-filling the machines. The tenant appeals the portion of the decision granting rent reductions for loss of storage space, arguing that: the amount granted is inadequate and was not justified by the ALJ; the tenant proved replacement cost for the space, while the landlord failed to do so; and the ALJ failed to take into account important facts that should have affected the valuation of the space.

MSC: To deny both appeals. (Mosbrucker/Marshall: 4-1;  
Gruber dissenting)

G. 665 Pine St. #1100

AL080086 & -87; AT080088

The landlord filed a petition seeking a determination pursuant to Rules §6.14 and the ALJ found that a rent increase was warranted pursuant to Costa-Hawkins because the original tenant, Martin Eng, no longer permanently resided in the subject unit. Additionally, two subtenants of Martin Eng's in the unit filed petitions requesting a determination as to the lawfulness of their rents. Rent overpayments were ordered refunded as the ALJ found that Martin Eng was charging the subtenants rents in excess of the rent he was paying to the landlord. Martin Eng appeals all three decisions, claiming that: the ALJ was favorably pre-disposed towards the landlord and his counsel; the subject unit is his principal place of residence, and he has no other legal residence; the homeowner's exemption on a condominium that he owned was the result of loan fraud by the seller; the subtenants were only charged for the furnishings in the unit; the landlord previously tried to evict him; and there is mold in the subject unit.

MSC: To deny the appeals. (Hurley/Gruber: 5-0)

H. 615 Burnett Ave. #1

AT080089

The tenant's petition alleging unlawful rent increase was denied because the ALJ found that the rent increase was authorized by Costa-Hawkins as the original tenant no longer resided in the unit and the petitioner was a subtenant who moved in after January 1, 1996, and not a co-tenant. The tenant appeals, claiming that: he has established a direct landlord-tenant relationship with the landlords, through the communication of necessary repairs and having performed work in the unit; and he would like to obtain counsel to represent him at a remand hearing.





MSF: To accept the appeal and remand the case for a hearing to consider the totality of circumstances. (Mosbrucker/Marshall: 2-3; Hurley, Gruber, Justman dissenting)

MSC: To deny the appeal. (Hurley/Gruber: 3-2; Marshall, Mosbrucker dissenting)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The annual statistical report for Fiscal Year 2007-08.

B. The office workload statistics for the months of July and August, 2008.

C. A new Commissioner Roster.

D. Articles from the Washington Post, New York Times, S.F. Examiner and the San Francisco Police Blotter.

#### VII. Director's Report

Executive Director Wolf informed the Commissioners that the landlord petitioned the Supreme Court for review in the Baychester case concerning successor liability, but the Petition was denied.

#### VIII. Old Business

Petitions for Extension of Time to do Capital Improvement Work  
(Rules and Regulations Section 12.15)

Discussion of this issue was continued to the next meeting due to the absence of Commissioner Murphy.

#### IV. Remarks from the Public (cont.)

D. Tenant and Master Tenant Martin Eng said that he felt the Board was very biased in the disposition of his case, and that they had made their minds up in advance. He also felt that the ALJ had his mind made up prior to the commencement of the hearing. Mr. Eng believes that "hanky-panky" was involved.

#### IX. New Business



Senior Administrative Law Judge Tim Lee told the Board that the 5-year "indexing" anniversary for the establishment of new base years pursuant to Rules §6.16 regarding utility passthroughs is coming up in January 2009. Since the adjustment procedures are somewhat complicated and staff expects landlords and tenants alike to be confused about the new requirements, the Commissioners asked that staff prepare a Memo outlining the history of the utility passthrough regulations and identifying issues presented.

X. Calendar Items

September 23<sup>rd</sup> & 30<sup>th</sup>, 2008 – NO MEETINGS

October 7, 2008

7 appeal considerations

Old Business:

Petitions for Extension of Time

Utility Passthrough Regulation 6.16

XI. Adjournment

President Gruber adjourned the meeting at 7:26 p.m.

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**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
MAYOR

DELENE WOLE  
EXECUTIVE DIRECTOR

DAVID GRUBER  
PRESIDENT

Tuesday, 6:00 p.m.,  
October 7, 2008

25 Van Ness Avenue, #70, Lower Level

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN I.  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER II.  
BARTHOLOMEW MURPHY

**AGENDA**

Call to Order

Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 1080 Shotwell #3

AL080092

The landlord appeals the dismissal of his petition for certification of capital improvement costs due to his failure to appear at the hearing.

B. 1350 Stockton #34

AT080093

One tenant appeals the dismissal of her hardship appeal due to her failure to appear at the hearing.

C. 197 Randall

AL080094

The landlord appeals the decision granting a claim of decreased housing services on the grounds of non-receipt of the Notice of Hearing.

D. 427 Stockton #709

AT080091

The tenant appeals the decision denying his claim of decreased housing services.





E. 400 Dolores #7

AL080095

The landlord appeals the decision granting a rent reduction due to the landlord's failure to provide additional keys to the unit.

F. 3569 Mission

AL080096

The landlord appeals the decision denying a Petition for Extension of Time to do Capital Improvement Work

G. 360 – 5<sup>th</sup> St./200 Clara St.

AL080097

The Master Tenant appeals the decision granting rent reductions due to decreased housing services and determining rent overpayments.

VI. Communications

VII. Director's Report

VIII. Old Business

Petitions for Extension of Time to do Capital Improvement Work  
(Rules and Regulations §12.15)

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

Utility Passthrough Regulation 6.16

X. Calendar Items

XI. Adjournment

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DAVID GRUBER  
*PRESIDENT*

**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
*MAYOR*

DELENE WOLF  
*EXECUTIVE DIRECTOR*

Tuesday, October 7, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

Call to Order

President Gruber called the meeting to order at 6:03 p.m.

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II. Roll Call

Commissioners Present: Crow; Gruber; Henderson; Hurley;  
Mosbrucker; Mosser.

Commissioners not Present: Justman.

Staff Present: Gartzman; Lee; Wolf.

Commissioner Beard appeared on the record at 6:05 p.m.; Commissioner Marshall arrived at the meeting at 6:07 p.m.; and Commissioner Murphy appeared at 6:20 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of September 16, 2008.  
(Henderson/Hurley: 5-0)

IV. Remarks from the Public

A. Attorney James Coy Driscoll, representing the tenant at 400 Dolores Street ((AL080095), told the Board that the tenant requested additional keys to the unit, but that the landlord refused due to "safety and security." Mr. Driscoll maintained that the landlord is trying to replace the Board of Supervisor's judgment, and asked that the Board deny the appeal.

V. Consideration of Appeals

A. 1080 Shotwell #3

AL080092





The landlord's petition for certification of capital improvement costs was dismissed due to his failure to appear at the properly noticed hearing. The landlord appeals, attaching the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing.  
(Hurley/Mosbrucker: 5-0)

B. 1350 Stockton #34

AT080093

The tenant's hardship appeal of a decision granting utility passthroughs was dismissed because of the tenant's failure to appear at the properly noticed hearing. The tenant appeals, claiming that she is 81 years old, her memory is poor and she wasn't feeling well on the day of the hearing.

MSC: To accept the appeal and remand the case for a new hearing.  
Should the tenant again fail to appear, absent extraordinary circumstances, no further hearings will be scheduled.  
(Marshall/Mosbrucker: 5-0)

C. 197 Randall

AL080094

The tenants' petition alleging substantially decreased housing services due to the landlord's unannounced entries into the unit was granted and the landlord was found liable to the tenants in the amount of \$200.00. The landlord failed to appear at the hearing and provides a Declaration of Non-Receipt of Notice of Hearing with the explanation that he was out of the country at the time and his mail was on hold.

MSF: To deny the appeal. (Marshall/Mosbrucker: 2-3; Beard, Gruber, Hurley dissenting)

MSC: To accept the appeal and remand the case for a new hearing.  
Should the landlord again fail to appear, no further hearings will be scheduled. (Hurley/Gruber: 3-2; Marshall, Mosbrucker dissenting)

D. 427 Stockton #709

AT080091

The tenant's petition alleging decreased housing services was denied because the ALJ found that the tenant failed to prove that the landlord's agent sprayed toxic chemicals in his refrigerator. The tenant appeals, claiming that he witnessed the pest exterminator spray the refrigerator and the food and meat that were inside.



MSC: To deny the appeal. (Hurley/Mosbrucker: 5-0)

E. 400 Dolores #7

AL080095

The tenant's petition alleging decreased housing services due to the landlord's failure to provide her with additional keys to the unit was granted and the ALJ found the landlord liable to the tenant in the amount of \$50.00 per month. On appeal, the landlord maintains that: the Ordinance requires that extra keys be provided for specific delivery persons or guests, and not just to be generally available in the event of deliveries or guests; housing services have not been decreased as security has been enhanced; the tenant failed to meet her burden of proving she has suffered a reduction in services; and it is contrary to the policy goals of the Ordinance to require that landlords allow every tenant to have additional keys to hand out to unspecified visitors.

MSC: To recuse Commissioner Henderson from consideration of this appeal. (Mosbrucker/Crow: 5-0)

MSC: To deny the appeal. (Marshall/Mosbrucker: 5-0)

F. 3569 Mission

AL080096

The landlord's Petition for Extension of Time to do Capital Improvement Work was denied because the ALJ found that the landlord had not obtained all the necessary permits; did not timely file the Petition; and that the landlord's estimate of time to complete the work was unreasonable. On appeal, the landlord claims that: the ALJ paid greater attention to evidence supplied by the tenant than that supplied by the landlord; the tenant was the cause of the delays; and the landlord's inexperience in these matters caused unintentional procedural mistakes.

MSC: To recuse Commissioner Mosbrucker from consideration of this appeal. (Crow/Hurley: 5-0)

MSC: To deny the appeal. (Marshall/Henderson: 5-0)

G. 360 – 5<sup>th</sup> St./200 Clara St.

AL080097

The tenant's petition alleging decreased housing services and an unlawful rent increase was granted, in part, and the Master Tenant was found liable to the tenant in the amount of \$40.00 for rent overpayments and \$956.00 due to habitability problems in the subject unit, an artists' community. The Master Tenant appeals, maintaining that: he is suffering financial hardship as a result of the tenant's claims; the wiring in the unit was not unsafe until the tenant





intentionally altered it; the Master Tenant promptly repaired the wiring after receiving notice of the problem; the area with the leaks was not part of the tenant's unit; the tenant did not request space heaters, which would have been provided to adequately heat the unit; and the Master Tenant was unaware of the provisions for lawfully passing on increased utility costs.

MSC: To recuse Commissioner Crow from consideration of this appeal.  
(Mosbrucker/Murphy: 5-0)

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A Pending Litigation Status Report from Senior Administrative Law Judge Tim Lee.

B. Several articles from BeyondChron, the S.F. Chronicle, the S.F. Examiner and the Central City Express.

C. A Memorandum from City Attorney Dennis Herrera regarding political activity by City officers and employees.

D. A Memorandum from Senior Administrative Law Judges Sandy Gartzman and Tim Lee regarding Utility Passthrough Regulation 6.16.

E. A letter from the Golden Gateway Tenants Association requesting amendments to Rules §6.16.

#### VII. Old Business

Petitions for Extension of Time to do Capital Improvement Work  
(Rules and Regulations §12.15)

The Board continued their discussion of issues that have come up in conjunction with the Petition for Extension of Time process. Currently, in order for the landlord's petition to be granted, the regulations require that the landlord have all necessary permits prior to filing the petition. The Board's ALJs often deny petitions for lack of all of the necessary permits, even when the landlord's estimate of additional time is reasonable and the ALJ does not believe the landlord is acting in bad faith. Commissioner Murphy pointed out the amount of necessary work often cannot be foreseen prior to starting the project, which may



take longer than anticipated. He suggested that landlords ought to get their petitions granted if they are acting in good faith, but with the requirement that they pay tenants the differential between their old and new rent if they are out of possession for more than ninety days. Senior ALJ Tim Lee told the Board that they could consider the permit requirement, similar to the requirement for a breakdown of the work to be performed, as evidentiary in nature, going to the reasonableness of the landlord's time estimate. Senior ALJ Gartzman pointed out the need for tenants to have some certainty as to when they will be able to move back in to their unit. Commissioner Mosbrucker also pointed out that clarification is needed as to how much time should be allowed for the tenant to reoccupy the unit, perhaps looking to Rules §12.15 for guidance. The Commissioners asked staff to draft a Memo setting out the various proposals discussed above, for continued discussion at the next meeting.

#### IV. Remarks from the Public (cont.)

B. Phil Page of the Golden Gateway Tenants Association put forth a proposal to amend Rules §6.16, which the Association believes to an "unfair transfer of funds from tenants to landlords." The proposal would increase the base year utility costs by the annual allowable increases before comparing that figure to the comparison year costs to determine the amount of the passthrough. Mr. Page said that the Board's adoption of this methodology wouldn't cure past injustices, but would stop the bleeding going forward.

#### VIII. New Business

##### Utility Passthrough Regulation 6.16

The Board discussed a Memorandum from Senior ALJs Sandy Gartzman and Tim Lee on Rules §6.16, reminding the Board that a new base year must be established every five years for landlords whose initial base year is 2002; and pre-2002 base year costs must be adjusted every five years to reflect the increase or decrease in utility costs during the five-year period. These requirements will be taking effect as of January 1, 2009, and staff expects there to be some confusion among landlords and tenants concerning the necessary calculations. Additionally, the number of utility passthrough petitions has increased each year due to new base years for new tenants, although few tenant objections are filed and most petitions are generally granted without a hearing. Staff provided the Board with a number of policy options, including: leaving the current regulation in effect as is; simplifying the process by eliminating the different base years for different tenants and using the immediately preceding two calendar years for all tenants; examining whether a petition-filing requirement is still necessary; including utility costs as part of a petition for increased operating and maintenance expenses; adopting the proposal put forward by the



Golden Gateway Tenants Association; and/or any other possible approaches to dealing with increases in utility costs. Commissioner Mosbrucker expressed her opinion that it would be best to simplify the process. The Board asked that staff run some numbers, and present the Board with illustrations of the numerical consequences of adopting any of the above alternatives for further discussion at the next meeting.

IX. Calendar Items

October 14<sup>th</sup> & 21<sup>st</sup>, 2008 – NO MEETINGS

October 28, 2008

7 appeal considerations

Old Business:

- A. Petitions for Extension of Time
- B. Utility Passthrough Regulation 6.16

X. Adjournment

President Gruber adjourned the meeting at 7:35 p.m.

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STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

DAVID CRUBER  
PRESIDENT

Tuesday, 6:00 p.m.,  
October 28, 2008

25 Van Ness Avenue, Room 330

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN I.  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NATE MOSSER II.  
BARTHOLOMEW MURPHY

**AGENDA**

10-24-08 13 REV

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III. Approval of the Minutes

IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 815 O'Farrell #502 AT080104

The tenant appeals the dismissal of her petition alleging decreased housing services because she signed a General Release for the relevant time period.

B. 250 Fell St. #45 AT080100

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

C. 550 Battery #14018 AT080101

The tenant appeals the decision approving utility passthroughs.

D. 550 Battery #1409 AT080098

The tenant appeals the decision approving utility passthroughs.

E. 2893 - 24<sup>th</sup> St. #B AT080099







The tenant appeals the decision finding that a rent increase is warranted pursuant to Rules §1.21.

F. 642 Mansell, Upper Level

AL080102

The landlord appeals the decision granting a claim of decreased housing services.

G. 444 Larkin St.

AL080103

The landlord appeals the denial of a Petition for Extension of Time to do Capital Improvement Work, arguing that the standards should be different in the event of a disaster.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Petitions for Extension of Time to do Capital Improvement Work  
(Rules and Regulations §12.15)

B. Utility Passthrough Regulation 6.16

IV. Remarks from the Public (cont.)

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IX. New Business

X. Calendar Items

XI. Adjournment

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City and County of San Francisco

Residential Rent Stabilization  
and Arbitration Board



DAVID GRUBER  
PRESIDENT

MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

Tuesday, October 28, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Room 330

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVED MOSSER  
BARTHOLOMEW MURPHY

Call to Order

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NOV 14 2008

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President Gruber called the meeting to order at 6:11 p.m.

II. Roll Call

Commissioners Present: Beard; Crow; Gruber; Henderson;  
Mosbrucker; Mosser.

Commissioners not Present: Hurley; Justman; Marshall.

Staff Present: Gartzman; Lee; Wolf.

Commissioner Murphy appeared on the record at 6:15 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of October 7, 2008.  
(Mosbrucker/Henderson: 5-0)

IV. Remarks from the Public

A. Tenant Joseph Jedekein of 550 Battery #14128 (AT080101) said that Golden Gateway listed 1964 as the date of ownership on their petition, but the property was sold to the present owners in 1991. Mr. Jedekein believes this makes a difference because the utility passthroughs will be larger due to the passage of so many years. Mr. Jedekein told the Board that the doctrine of stare decisis doesn't make sense when the facts are different and the Warren Court overturned the "separate but equal" doctrine in Brown v. Board of Education, so he believes that the Commissioners can "consider the equities."

B. Golden Gateway tenant Ernestine Weiss handed out a copy of the Golden Gateway Tenants' Association Bylaws. She said that the individual at the meeting purporting to represent the organization is illegitimate because there hasn't been an election in many years, and he does not represent all the tenants.





C. Tenant Brian Browne of 550 Battery #1409 (AT080098) distributed an article he wrote regarding old Rules and Regulations Section 4.11. Mr. Browne went over his calculations to show that the landlord's costs haven't gone up more than the annual increases over the years, despite no energy conservation efforts. Mr. Browne stated that \$12.03 of his rent went towards power when he moved in, and that figure is \$12.039 now; and he does not feel that Rules Section 6.16 tracks the CPI or PG&E costs. Mr. Browne said that \$6.16 constitutes a "regressive tax on aging," invalidates his contract and that it shouldn't be his burden to prove that the landlord doesn't deserve a passthrough.

V. Consideration of Appeals

A. 815 O'Farrell #502

AT080104

The tenant's petition alleging decreased housing services was denied because the Administrative Law Judge (ALJ) found that the tenant's claim of lack of heat was resolved by a Surrender Agreement in which the parties agreed to a release of all known claims. The tenant appeals, arguing that the heat issue is within the Rent Board's jurisdiction; the Surrender Agreement was signed after the tenant had been without heat for over one month; and PG&E personnel are witnesses to the veracity of her claim.

MSC: To deny the appeal. (Mosbrucker/Murphy: 5-0)

B. 250 Fell St. #45

AT080100

The landlord's petition for certification of capital improvement costs to 31 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship.  
(Mosbrucker/Henderson: 5-0)

C. 550 Battery #1418

AT080101

The landlord's petition for approval of utility passthroughs to 14 of 794 units was granted. One tenant appeals on the grounds that: the establishment of an earlier base year in a prior case should not be res judicata because the prior decision was erroneous; and the landlord did not own the building until the early 1990s, which should result in a much smaller passthrough.

MSC: To recuse Commissioner Crow from consideration of this appeal.  
(Mosbrucker/Henderson: 5-0)





MSC: To deny the appeal. (Murphy/Gruber: 3-2; Henderson, Mosbrucker dissenting)

D. 550 Battery #1409

AT080098

The landlord's petition for approval of utility passthroughs to 65 of 794 units was granted. One tenant appeals the decision on the grounds of the tenant in unit #1418, above, as well as asserting that: information regarding the alleged incorrect ownership date was not available at the time of the prior hearings; the decision negates the terms of his lease; and Rules §6.16 cannot be justified by mathematical, economic or policy arguments.

MSC: To recuse Commissioner Crow from consideration of this appeal. (Mosbrucker/Henderson: 5-0)

MSC: To deny the appeal. (Murphy/Gruber: 3-2; Henderson, Mosbrucker dissenting)

E. 2893 – 24<sup>th</sup> St. #B

AT080099

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted because the ALJ found that the original tenant no longer occupied the unit as her principal place of residence and a subsequent occupant was a guest, rather than a tenant. On appeal, the second tenant maintains that: the ALJ exhibited bias against him; there are factual errors in the decision; he is a tenant at the subject unit, with the consent of the landlord; he has paid rent on behalf of himself and the original tenant, which was accepted by the landlord; his due process rights have been violated; and the landlord has waived the right to a rent increase under the facts of this case.

Since the original tenant will be filing an untimely appeal of the decision, it was the consensus of the Commissioners to continue consideration of this appeal in order to consolidate the two appeals.

F. 642 Mansell, Upper Level

AL080102

The tenant's petition alleging decreased housing services due to lack of heat in the unit was granted and the landlord was found liable to the tenant in the amount of \$30.00 per month. On appeal, the landlord claims that: there is sufficient heat in the unit; the tenant never complained about a lack of heat in the unit; and the tenant's daughter has moved in to the unit with her.

MSC: To recuse Commissioner Crow from consideration of this appeal. (Mosbrucker/Henderson: 5-0)



MSC: To deny the appeal. (Murphy/Gruber: 5-0)

G. 444 Larkin St.

AL080103

The landlord's Petition for Extension of Time to do Capital Improvement Work was denied because the ALJ found that the landlord did not have all the necessary permits at the time the Notices to Vacate were issued and did not file the Petition in a timely manner. The landlord appeals the Board's interpretation of the regulations, which requires that all necessary permits be obtained prior to the filing of the petition, arguing that this is not possible in the event of a disaster, which occurred in the instant case. The landlord also maintains that it was not possible to ascertain the full scope of work until the tenants vacated their units. Lastly, the landlord claims that the delay in filing the petition should not mandate denial in situations where the requested extension is found to be reasonable.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to grant the petition based on the facts of this case. (Murphy/Gruber: 4-1; Henderson dissenting)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. Newspaper articles from the Chicago Sun-Times, the Chicago Tribune, and the Los Angeles Times.

B. A Press Release from the Mayor's Office regarding housing production.

C. A copy of the appellate decision in the case of Manufactured Home Communities, Inc. v. County of San Luis Obispo.

#### VII. Director's Report

Executive Director Wolf informed the Board that legislation that would allow a passthrough of increased water bill costs was continued by the full Board of Supervisors at this afternoon's meeting. She also told them that it is time for the annual review of the SRO Hotel Visitor Policy. Since prior Tenant Commissioner Larry Becker had been the Tenant Commissioner Representative on the Committee that is convened prior to the Public Hearing, she asked that the Tenant Commissioners consider a replacement representative.

#### VIII. Old Business



A. Petitions for Extension of Time to do Capital Improvement Work  
(Rules and Regulations Section 12.15)

Discussion of this issue was continued due to the absence of Commissioner Marshall.

B. Utility Passthrough Regulation 6.16

The Board continued their discussion of possible changes to the methodology for calculation of utility passthroughs. Senior Administrative Law Judge Sandy Gartzman walked the Board through a Memorandum from she and Senior ALJ Tim Lee, with charts using numbers from actual cases showing the effect of different base year adjustment methods on passthrough amounts. Two charts were prepared: one for landlords using base years earlier than 2002 and one for landlords using 2002 and later base years. The charts compared what the passthroughs would be under the current regulation with what they would be under the Golden Gateway Center tenants' proposal, which adjusts base year utility costs by the sum of the allowable annual rent increases; what the passthroughs would be using the last two calendar years; and what they would be if everyone used a 2003 base year. The Commissioners discussed the merits of the various proposals, whether it is necessary to continue to require a landlord petition, and whether tenants should be able to file a hardship application without first filing an appeal to the Board. Commissioner Mosbrucker felt that eliminating the petition requirement would put too much of an onus on tenants, while Commissioner Murphy said that there is no incentive for landlords to change the process unless it is simplified. Commissioner Beard suggested that it might be possible to require a petition only when there is a change, such as a different base year, and asked whether some kind of random audit of landlord's calculations could be conducted. Commissioner Murphy also expressed his opinion that it is beyond the Board's authority to make changes to the calculation methodology, that any such change would constitute an unconstitutional taking and that landlords have a vested right in continuing to receive the passthrough calculated on earlier base years. The Board asked staff to draft language requiring landlords who use pre-2002 base years under the current regulation to use a 2003 base year beginning January 1, 2009. This change would eliminate the two separate categories for calculating passthroughs and require those landlords using pre-2002 base years to use the same method used by all other landlords. Additional language will be drafted that eliminates or modifies the petition requirement, including a random audit process, if possible. Lastly, the City Attorney will be asked to provide an opinion on the constitutional, takings and vested rights concerns expressed by Commissioner Murphy.

Discussion of this issue will be continued at the next meeting.



IV. Remarks from the Public (cont.)

D. Relatives of the landlord at 642 Mansell (AL080102) said that the landlord was unable to attend the hearing due to health reasons, and was unaware that she could testify by phone. They said that the tenant wasn't told not to use the heaters, just not to use them extensively or the power would shut off. They maintained that there is sufficient heat in the unit. The landlord's daughter-in-law told the Board that the tenant filed her petition after she was asked to move out of the unit because the landlord's son and his family were moving back in to take care of his mother. The tenant's daughter having moved in to the unit presents the landlord with additional costs.

E. Golden Gateway tenant Bob Coleman told the Board that just because the hardship remedy isn't being extensively exercised by the tenants at Golden Gateway doesn't mean that it doesn't exist. He said that many tenants are overwhelmed by poverty and other pressing needs.

F. Golden Gateway tenant Brian Browne said that, at the last appeal consideration, one Commissioner spoke of energy conservation efforts being made by the Golden Gateway Center, which he does not believe to be the case. Mr. Browne believes that people shouldn't have to humble themselves to make a hardship claim when there's no need.

G. Golden Gateway tenant Phil Page urged the Board to include indexing of base year utility costs in the rent, otherwise he believes that they will be unfair to landlords and tenants.

H. Golden Gateway tenant Ernestine Weiss said that landlords shouldn't be able to use years when they didn't own the building in their passthrough calculations and the fact that they can do so is "mind-boggling."

IX. Calendar Items

November 4<sup>th</sup> & 11<sup>th</sup>, 2008 – NO MEETINGS

November 18, 2008

7 appeal considerations

Old Business: Utility Passthrough Regulation 6.16

X. Adjournment

President Gruber adjourned the meeting at 8:25 p.m.





City and County of San Francisco



DAVID GRUBER  
PRESIDENT

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

I.

II.

III.

IV.

V.

NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

Tuesday, 6:00 p.m.,  
November 18, 2008  
25 Van Ness Avenue, #70, Lower Level

Residential Rent Stabilization  
and Arbitration Board

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

AGENDA

11-14-08A11:11 RCVD

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NOV 14 2008

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PUBLIC LIBRARY

Call to Order

Roll Call

Approval of the Minutes

Remarks from the Public

Consideration of Appeals

A. 651 Peralta Ave. #A

AT080111

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

B. 1220 - 14<sup>th</sup> Ave. #206

AL080106

The landlord appeals the decision only partially certifying capital improvement costs.

C. 1135 Taylor St.

AL080105

The landlord appeals the decision granting rent reductions due to long-term construction noise on the premises.

D. 2893 - 24<sup>th</sup> St. #B

AT080099 & AT080110

Two tenants appeal the decision finding that the unit is not their principal place of residence pursuant to Rules §1.21.

E. 405 Davis Court #1706

AL080107





The landlord appeals the decision finding that no rent increase is warranted under Rules §1.21.

F. 251 Castro St.

AT080108

The tenants appeal the decision finding that a rent increase is warranted under Rules §1.21.

G. 949 Capp #25

AT080109

The tenant appeals the decision denying a claim of unlawful rent increase.

VI. Communications

VII. Director's Report

VIII. Old Business

Utility Passthrough Regulation 6.16

IV. Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

IX. New Business

X. Calendar Items

XI. Adjournment

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### Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Timothy Lee has been designated to coordinate this agency's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided under the Act, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845.

### Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlet Place, Room 244, San Francisco, CA 94102 at 554-7724.





**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

DAVID GRUBER  
PRESIDENT

Tuesday, November 18, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CAITLY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

GOVERNMENT  
DOCUMENTS DEPT

DEC - 2 2008

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PUBLIC LIBRARY

Call to Order

President Gruber called the meeting to order at 6:04 p.m.

Roll Call

Commissioners Present: Beard; Crow; Gruber; Henderson; Hurley;  
Mosbrucker.

Commissioners not Present: Justman; Marshall; Murphy.

Staff Present: Gartzman; Lee; Wolf.

Commissioner Mosser appeared on the record at 6:11 p.m.

Approval of the Minutes

MSC: To approve the Minutes of October 28, 2008.  
(Mosbrucker/Henderson: 5-0)

Remarks from the Public

A. Attorney Karen Uchiyama, representing the landlord in the case at 1135 Taylor St. (AL080105), told the Board that the landlord was withdrawing the portion of the appeal having to do with the defective electrical service. Ms. Uchiyama said that the Administrative Law Judge (ALJ) erred in finding that the Golden Gateway decision doesn't apply to remodeling and improvement work but only to repair and maintenance, which sends a message to landlords not to upgrade their properties. Ms. Uchiyama told the Board that the ALJ missed the policy arguments behind Golden Gateway. She also said that all the work was done pursuant to the original permit, so it was not untimely or drawn out.

B. Jim Rausch, the property manager for the building at 1220 - 14<sup>th</sup> Ave. (AL080106), submitted a statement on behalf of the landlord, who was unable to attend.







C. Katie Rush, an attorney for the Aids Legal Referral Panel, spoke in support of the appeal of the tenants at 251 Castro (AT080108). Ms. Rush told the Board that extreme hardship will result if the appeal isn't granted, and that stable housing is especially crucial for tenants with AIDS. Ms. Rush said that the loss of housing can result in a rapid decline in health or homelessness, and that these tenant appellants have no replacement housing options. She foresaw them having to choose between housing and health care.

D. Andy Wesley, attorney for the tenants at 251 Castro, told the Board that the tenants have no other housing, nor do they own any other property. Mr. Wesley said that the tenants returned to the unit mid-way through the hearings, which had always been their intent.

E. Ron Schivo, attorney for the landlord in the case concerning 2893 – 24<sup>th</sup> St. (AT080099 & AT080110), told the Board that the original tenant resides in Hawaii and she hid the fact that there was a sub-tenant on the premises. Mr. Schivo asserted that disposition of the appeal should be limited to the facts at the time of the hearing, and not claims filed later. Mr. Schivo said that a Costa-Hawkins analysis of the facts would lead to the same result and asked that the Decision be affirmed.

#### V. Consideration of Appeals

##### A. 651 Peralta Ave. #A

AT080111

The landlord's petition for certification of capital improvement costs to one of two units was granted, resulting in a passthrough in the amount of \$313.54. The tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Hurley/Henderson: 5-0)

##### B. 1220 – 14<sup>th</sup> Ave. #206

AL080106

The landlord's petition for certification of the costs of deck work for four units in the 24-unit building was granted only as to the costs of one of the decks, as the other work was found to be in the nature of repair rather than capital improvement. The landlord appeals, claiming that the work on the deck in unit #206 constituted an improvement to the building.

MSC: To deny the appeal. (Mosbrucker/Henderson: 3-2; Gruber, Hurley dissenting)

##### C. 1135 Taylor St.

AL080105



The tenant's petition alleging decreased housing services due to long-term construction noise on the premises and faulty electrical service was granted and the landlord was found liable to the tenant in the amount of \$4,818.75. On appeal, the landlord claims that: the rent reductions are barred by the Golden Gateway and Doric decisions; housing services were not removed but, rather, temporarily interrupted; the landlord's right to a capital improvement passthrough should have no bearing on whether the tenant should be granted a rent reduction; the decision constitutes an unconstitutional "taking" of the landlord's property; the landlord is being punished for improving the building; the tenant's rent is so low that no rent reduction would be warranted, no matter the condition of the building; the tenant suffered mere inconveniences, while the property remained habitable; the tenant failed to provide continuing notice to the landlord; the landlord's attempts to mitigate the problem were refused by the tenant; the electrical defects were caused by a tenant in a neighboring unit; and there is no justification for the time period for which rent reductions were granted.

MSC: To deny the appeal. (Mosbrucker/Henderson: 3-2; Gruber, Hurley dissenting)

D. 2893 – 24<sup>th</sup> St. #B

AT080099 & AT080110  
(cont. from 10/28/08)

The original tenant's appeal was filed five days late because the tenant did not receive a copy of the Decision at her Hawaii address.

MSC: To find good cause for the late filing of the appeal.  
(Hurley/Henderson: 5-0)

The landlord's petition seeking a determination pursuant to Rules §1.21 was granted because the ALJ found that the original tenant no longer occupied the unit as her principal place of residence and a subsequent occupant was a guest, rather than a tenant. On appeal, the second tenant maintains that: the ALJ exhibited bias against him; there are factual errors in the decision; he is a tenant at the subject unit, with the consent of the landlord; he has paid rent on behalf of himself and the original tenant, which was accepted by the landlord; his due process rights have been violated; and the landlord has waived the right to a rent increase under the facts of this case. The original tenant also appeals, claiming that: she forwarded rent checks to the subsequent occupant, who began writing his own checks to the landlord in order to force her out of the unit; and she cannot return to the subject unit until she completes medical treatments in Hawaii and establishes eligibility for health insurance from her employer.

MSC: To deny both appeals. (Hurley/Gruber: 4-1; Mosbrucker dissenting)



E. 405 Davis Court #1706

AL080107

The landlord's petition seeking a determination pursuant to Rules §1.21 was denied because the ALJ found that the subject unit is the tenants' principal place of residence. On appeal, the landlord argues that: the preponderance of the evidence shows that the tenants principally reside at a condominium they own in Hawaii; and the tenants failed to prove that their principal place of residence is the San Francisco unit.

MSC: To recuse Commissioner Crow from consideration of this appeal.  
(Mosbrucker/Gruber: 5-0)

MSC: To deny the appeal. (Mosbrucker/Henderson: 3-2; Gruber, Hurley dissenting)

F. 251 Castro St.

AT080108

The landlord's petition for a determination pursuant to Rules §1.21 was granted because the ALJ found that the subject unit was not the tenants' principal place of residence. The tenants appeal, claiming that they temporarily resided at a home in Palm Springs for a two-year period for health reasons, but that they never cut their ties to the San Francisco unit, which is their principal place of residence; the tenants were not allowed to make crucial waiver, estoppel and reliance arguments at the hearing; the tenants will be made homeless should the decision be allowed to stand; and the landlord did not meet his burden of proof.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a supplemental hearing to hear testimony from both parties regarding the withdrawal of the previous petition and whether the landlord changed the terms of the tenancy by accepting the tenants' stated, planned, periodic absences.  
(Beard/Mosbrucker: 5-0)

G. 949 Capp #25

AT080109

The tenant's petition alleging an unlawful rent increase was denied because the ALJ found that a \$200.00 rent reduction was temporary and agreed to by the landlord due to the financial difficulties being experienced by the tenant. On appeal, the tenant claims that: he was denied due process at the hearing; there are errors in the Decision; the ALJ exhibited bias against the tenant; the rent was renegotiated based on market conditions, and not due to financial hardship; and the rent increase should not go into effect until 60 days from now.



MSC: To recuse Commissioner Crow from consideration of this appeal.  
(Mosbrucker/Henderson: 5-0)

MSC: To deny the appeal. (Gruber/Hurley: 5-0)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A copy of Proposition M, concerning tenant harassment, which passed on the November ballot and is anticipated to go into effect around mid-December.

B. An article from the S. F. Chronicle regarding a multi-million dollar jury verdict against a landlord for failure to return security deposits.

C. A letter from tenant Allen White with suggested revisions to the SRO Hotel Visitor Policy.

D. The office workload statistics for the month of September, 2008.

#### VII. Old Business

##### A. Utility Passthrough Regulation 6.16

The Board continued their discussion of possible changes to the methodology for calculation of utility passthroughs. Senior Administrative Law Judge Sandy Gartzman walked the Board through proposed draft language, and answered questions from several Commissioners. The new proposal would: eliminate all pre-2002 base years for utility passthroughs calculated on or after January 1, 2009, which would affect the Golden Gateway Center and eleven other properties. Tenants with pre-2002 base years would have a base year of 2003 commencing January 1, 2009. A new base year would be established for all tenancies at the end of every fifth calendar year after the initial base year. No petition would be required except where the landlord is comparing utility costs for the two most recent calendar years. For other base years used, the landlord would be required to file a Utility Passthrough Calculation Worksheet with the Board, which would be provided to the tenant; 10% of these would be reviewed, as well as at least one Worksheet for properties with no prior utility passthrough petition on file; and tenants would be able to file a hardship application within one year of the effective date of the passthrough. Tenants would be able to file petitions challenging utility passthroughs on several grounds within one year of the effective date of the passthrough.





Discussion of this proposal and any alternate proposals will be continued at the December 2<sup>nd</sup> Board meeting.

IV. Remarks from the Public (cont.)

F. Tenant Sarah Warner of 1135 Taylor (AL080105) asked for a clarification regarding the ruling on her landlord's appeal.

G. Tenant Linda Post asked a question concerning the process by which a tenant finds out the amount of their utility passthrough.

VIII. Calendar Items

November 25, 2008 - NO MEETING

December 2, 2008

6 appeal considerations

Old Business: Utility Passthrough Regulation 6.16

The Staff Holiday Party will be on Thursday, December 18<sup>th</sup> at noon at Don Ramon's restaurant.

IX. Adjournment

President Gruber adjourned the meeting at 7:50 p.m.

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**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
MAYOR

DAVID GRUBER  
PRESIDENT

Tuesday, 6:00 p.m.,  
December 2, 2008

DELENE WOLF  
EXECUTIVE DIRECTOR

25 Van Ness Avenue, #70, Lower Level

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN I.  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER II.  
BARTHOLOMEW MURPHY

**AGENDA**

**GOVERNMENT  
DOCUMENTS DEPT**

**DEC - 2 2008**

**SAN FRANCISCO  
PUBLIC LIBRARY**

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 1633 - 11<sup>th</sup> Ave. AL080115

The landlord appeals the decision granting claims of decreased housing services and unlawful rent increase.

B. 520-1/2 Visitacion Ave. AT080117

The tenants appeal the denial of their petition alleging decreased housing services.

C. 1620 Grove St. AL080114

The landlord appeals the decision granting a claim of unlawful rent increase.

D. 151 - 26<sup>th</sup> Ave. AL080113

The landlord appeals the decision determining that no rent increase is warranted pursuant to Rules Sections 1.21 and 6.14.

E. 1400 McAllister #12 AL080112



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The landlord appeals the decision granting a claim of unlawful rent increase.

F. 1142 Jackson #4

AT080116

The tenant appeals the portion of the decision finding that a claim of decreased housing services due to construction noise is barred by the Golden Gateway decision.

VI. Communications

VII. Director's Report

VIII. Old Business

Utility Passthrough Regulation 6.16

IV. Remarks from the Public (cont.)

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## Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Timothy Lee has been designated to coordinate this agency's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided under the Act, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845.

## Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlet Place, Room 244, San Francisco, CA 94102 at 554-7724.







DAVID GRUBER  
*PRESIDENT*

**MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
*MAYOR*

DELENE WOLF  
*EXECUTIVE DIRECTOR*

Tuesday, December 2, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

Call to Order

President Gruber called the meeting to order at 6:00 p.m.

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**II. Roll Call**

Commissioners Present: Beard; Crow; Gruber; Henderson; Hurley;  
Justman; Mosbrucker.

Staff Present: Gartzman; Lee; Wolf.

Commissioner Mosser appeared on the record at 6:05 p.m.; Commissioner Marshall arrived at the meeting at 6:09 p.m.; and Commissioner Murphy appeared at 6:11 p.m.

**III. Approval of the Minutes**

MSC: To approve the Minutes of November 18, 2008.  
(Hurley/Henderson: 5-0)

**IV. Remarks from the Public**

A. Andrew Zachs, Attorney for the landlord at 151 – 26<sup>th</sup> Ave. (AL080113), told the Board that if there was ever a case for 1.21 exemption from the rent increase limitations of the Ordinance, this is it. Mr. Zachs said that the tenant actively litigated the right to convert a life estate on a property in Hawaii to a fee simple interest, which requires that it be a principal place of residence. The tenant also had a multi-million dollar home in San Francisco with a Homeowner's Exemption. Mr. Zachs believes that the decision that this tenant is a "Tenant in Occupancy" constitutes an injustice which doesn't further the policies of the Rent Ordinance.

B. Master Tenant Dmitry Shkipin submitted a letter in which he pointed out that Ordinance Section 37.9(b) allows a Master Tenant to evict a subtenant





without a Just Cause reason, while Rules Section 6.15(f)(1) requires that this be disclosed to the subtenant prior to commencement of the tenancy. Mr. Shkipin feels that this constitutes a contradiction that should be rectified.

C. Tenant Gerald Greene of 520-1/2 Visitacion Avenue (AT080117) told the Board that the landlord takes advantage of a disabled tenant at the property, Maggie Brown, who is a victim of two strokes. Mr. Greene said that the tenants receive "no care and disrespect" from the landlord, and their bedroom is not up to code.

D. Tenant Maggie Brown of 520-1/2 Visitacion Avenue said that the landlord takes advantage of her, bothers her all the time and calls the police, which she thinks is wrong.

E. The landlord at 520-1/2 Visitacion, Willie Dotson, asked for clarification regarding whether the tenants were appealing the decision in the current arbitration, or a prior mediated agreement.

F. Landlord Jasper Williams of 1620 Grove St. (AL080114) said that the Decision of the Administrative Law Judge (ALJ) is "entirely wrong." Mr. Williams told the Board that the original tenants at the property are long gone, and roommates come and go. He alleged that he was told by a Commissioner long ago that when his original tenant moved out, he could terminate the tenancy. He asked that the Board try and look at things from a landlord's perspective.

V. Consideration of Appeals

A. 1633 – 11<sup>th</sup> Ave.

AL080115

The tenant's petition alleging decreased housing services and an unlawful rent increase was granted, in part, and the landlord was found liable to the tenant in the amount of \$920.00 for rent overpayments and \$30.00 per month due to a defective stove. The landlord appeals on the grounds that: the landlord erred and gave incorrect information at the hearing regarding the setting of the initial base rent for the unit, which was reduced due to the tenant's financial circumstances; and the tenant now has two additional tenants in the unit with no increase in rent.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

B. 520-1/2 Visitacion Ave.

AT080117

The tenant's petition alleging decreased housing services was denied because the ALJ found that the parties had entered into a mediated agreement regarding



the claim of a windowless bedroom, and nothing has changed since the date of that agreement. The tenants appeal, claiming that the landlord is not upholding the terms of the agreement and the ALJ refused to consider evidence supporting that contention.

MSC: To deny the appeal. (Murphy/Gruber: 4-1; Marshall dissenting)

C. 1620 Grove St.

AL080114

The tenant's petition alleging an unlawful rent increase from \$2,075.00 to \$2,975.00 was granted because the ALJ found that the tenant is a tenant, and not a subtenant or assignee, and no §6.14 notice was served on the tenant by the landlord. The landlord appeals, arguing that: there is no evidence in the record that the landlord failed to serve a 6.14 notice; the increase to \$2,975.00 was actually a conditional offer to rent the premises, over which the Rent Board has no jurisdiction; the landlord has been deprived of due process; a tenancy was not created by the landlord's acceptance of rent and communications with the tenant, because the tenant breached an agreement to move at the end of a year's time; the tenant is an assignee and therefore the landlord is entitled to set the rent at market; the ALJ did not follow a prior decision of the Board; the tenants have refused to provide the landlord with personal or credit information; and there are other factual errors in the Decision.

MSC: To deny the appeal. (Mosbrucker/Marshall: 5-0)

D. 151 – 26<sup>th</sup> Ave.

AL080113

The landlord filed a petition seeking a determination pursuant to Rules Sections 1.21 and 6.14. The ALJ found that no rent increase is warranted because one member of the tenant's family, the husband, still occupies the subject unit as his principal place of residence, while the other family members principally reside in Hawaii. On appeal, the landlord argues that: the ALJ exceeded his authority in making a determination under Costa-Hawkins, which was not requested by the landlord; a single family cannot have separate primary residences; the tenant family has had very little contact with San Francisco until very recently, including voting in Hawaii; Homeowner's Exemptions on two separate properties have been taken by the tenants during the relevant time period; the tenant's vehicle is registered in California and there are utility charges at the subject unit because he is frequently here on business; the tenants failed to provide relevant tax information; and the tenants provided inconsistent testimony at the hearing.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to allow the tenant to produce evidence regarding tax returns and any relevant schedules from 2004 forward and



to delete the Costa-Hawkins determination; a hearing will be held only if necessary. (Mosbrucker/Marshall: 4-1; Gruber dissenting)

E. 1400 McAllister #12

AL080112

This case was settled and the appeal withdrawn prior to the meeting.

F. 1142 Jackson #4

AT080116

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$700.00 due to lack of heat in the unit. The ALJ found that a claim regarding construction noise in the building was barred by the Golden Gateway decision. The tenant appeals, asserting that: the landlord did more than reasonably necessary repair and maintenance work, as the unit above the tenant's was completely demolished and remodeled; the tenant was deprived of quiet enjoyment of the unit for a long period of time; the rent reduction for the lack of heat should go back longer, as the landlord should have been aware that the tenants were without heat; and another unit in the building is in deplorable condition, but the tenant is afraid to complain.

MSC: To deny the appeal. (Murphy/Gruber: 3-2; Marshall, Mosbrucker dissenting)

#### VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The Board received a copy of a letter from tenant Lawrence Berg to Attorney Ronald Schivo regarding the denial of his appeal in the case at 2893 – 24<sup>th</sup> St. #B (AT080099 & AT080110).

B. An article from the Marin Independent Journal about the owner of a Larkspur Landing apartment complex who is challenging internet free-speech laws in federal court to try to stop people from posting negative comments about the complex.

C. The office workload statistics for the month of October, 2008.

#### VII. Director's Report





Executive Director Wolf told the Commissioners that the annual allowable rent increase for the period 3/1/09 – 2/28/10 is 2.2%.

### VIII. Old Business

#### Utility Passthrough Regulations 6.16 and 10.13

The Board continued their discussion of a draft proposal to change the methodology for calculation of utility passthroughs. Commissioner Murphy stated his opposition to the proposal because he believes there was a compromise four years ago and it is unfair to re-visit it now, and the hardship provision provides a safety valve for tenants who cannot afford it. Commissioner Murphy believes that any changes should look at the whole process, which is too onerous for landlords. Commissioner Mosbrucker said that the proposed methodology is simpler because it requires just one petition every five years, and a worksheet in the intervening years. Commission Marshall reiterated her unhappiness with the lack of a petition each year. The Board engaged in a discussion of the elements that went into the formulation of current Rule Section 6.16, and whether utility costs are embedded in a tenant's base rent. Commissioner Mosbrucker expressed her support for trying the new methodology for a few years to see if it works – if the Board discovers that there is a lot of fraud, or passthroughs are not being done correctly, the issue can be reexamined. The Board then voted as follows:

MSC: To put the proposed amendments to Rules Sections 6.16 and 10.13 out for Public Hearing. (Mosbrucker/Beard: 3-2; Gruber, Murphy dissenting)

The proposed amendments are as follows below: (additions in underline; deletions in strikethrough)

#### **Section 6.16 Utility Passthrough**

(Added August 24, 2004; Subsection (i) amended September 21, 2004)

The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served after November 1, 2004:

(a) Where a landlord pays for gas, electricity and/or steam provided directly to the unit occupied by the tenant and/or to the common areas of the property in which the unit is located, and seeks to recover the increase in the cost of these utilities from the tenant, the landlord may pass through the increased costs of the utilities between the "base year" and the comparison year, as set forth below. ~~must file a petition for approval of the utility passthrough on a form prescribed by the Board. The petition shall specify the units on the property that are subject to the petition. The petition will be decided without a hearing unless the Administrative Law Judge determines that a hearing is required.~~

(b) Determination of Initial "base year"

(i) For all tenancies existing on December 31, 2003, the initial "base



year" for purposes of this section shall be calendar year 2002 with the following exception:

(ii) (A) ~~However, For utility passthrough petitions filed prior to January 1, 2009, where a utility passthrough is was in effect for a tenancy on November 1, 2004, the landlord may could elect to use calendar year 2002 as the initial "base year" or elect to continue to use the earlier "base year" for all future utility passthrough calculations, provided that the landlord petitioned the Board for approval of the earlier "base year" and the Board determined that the earlier "base year" is was proper under Section 4.11 of these Rules.~~

(B) For utility passthrough petitions and Utility Passthrough Calculation Worksheets filed on or after January 1, 2009, the initial "base year" for all tenancies with an approved earlier "base year" shall be calendar year 2003.

(iii)(ii) For all new tenancies commencing after December 31, 2003, the initial "base year" shall be the calendar year immediately preceding the year of the inception of the tenancy.

(iv)(iii) A landlord may petition the Board for approval of an alternate "base year" if the landlord became an owner of record after December 31, 2002 and demonstrates a good faith, but unsuccessful, effort to obtain the utility bills from the former landlord and/or the utility company that are necessary to establish the "base-year" utility costs required by subsections (b)(i) or (b)(ii) or (b)(iii). The Board will not approve an alternate "base year" that creates exaggerated results unless the proposed alternate "base year" coincides with the landlord's first full calendar year of ownership.

(c) Subsequent Adjustments to Initial "base year"

Different tenants in the same property may have different initial "base years" depending on when they moved into the property or whether the Board has approved use of an earlier "base year" pursuant to subsection (b)(ii)(i) above or use of an alternate "base year" pursuant to subsection (b)(iv)(iii) above. The initial "base year" utility costs shall be adjusted every five years as follows:

(i) Where the initial "base year" is 2002 or later, a new "base year" is established at the end of every fifth calendar year after the initial "base year". For example, where the initial "base year" is 2002, the new "base year" shall be 2007 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2009 and December 31, 2013. If the tenancy continues for an additional five years, the "base year" will become 2012 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2014 and December 31, 2018, and so on. For another example, where the initial "base year" is 2003, including those tenancies that had an earlier "base year" prior to January 1, 2009, the new "base year" shall be 2008 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2010 and December 31, 2010. If the tenancy continues for an additional five years, the "base year" will become 2013 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2015 and December 31, 2019, and so on. For another example, where the initial "base year" is 2004, the new "base year" shall be 2009 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2011 and December 31, 2015. If the tenancy continues for an additional five years, the "base year" will become 2014 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2016 and December 31, 2020.

(ii) Where the initial "base year" is prior to 2002 and has been approved by the Board pursuant to subsection (b)(ii) above, the landlord may elect to keep said "base year" for purposes of future utility passthrough calculations without regard to subsection (e)(i) above. However, in such a case, the landlord must adjust the "base year" utility costs every five years beginning with utility passthrough petitions filed in 2009. The first "base year" adjustment shall equal the difference, if more than zero, between 2003 utility costs and 2007 utility costs, and it shall be added to the "base year" utility cost used by the landlord. This "base year" adjustment shall be in effect for petitions filed between January 1, 2009-



and December 31, 2013. Every fifth year thereafter (i.e. 2014, 2019, etc.), the landlord's petition shall include another "base year" adjustment equal to the difference in utility costs, if more than zero, for each subsequent five year period (e.g., 2008 and 2012, 2013 and 2017, etc.). If utility costs decrease during any five year adjustment period, then no adjustment shall be required to the "base year" utility costs, but the landlord must deduct the amount of the decrease from the difference between the initial "base year" utility costs and the new "comparison year" utility costs. For example:

(A) — Suppose a tenant's approved "base year" is 1986, and the 1986 utility costs are \$15,000. In 2009, the landlord must calculate the difference between the 2003 utility costs (\$20,000) and the 2007 utility costs (\$30,000). Since utility costs increased between 2003 and 2007, the landlord must add the increase (\$10,000 [\$30,000 minus \$20,000]) to the initial "base year" utility costs (\$15,000) and then compare the adjusted "base year" utility costs (\$25,000 [\$10,000 + \$15,000]) to the 2009 "comparison year" utility costs (\$35,000) in order to calculate the new utility passthrough (\$10,000 [\$35,000 minus \$25,000]).

(B) — If utility costs have decreased (e.g., 2003's utility costs = \$20,000 and 2007's utility costs = \$15,000), then the landlord does not adjust the 1986 "base year" utility costs (\$15,000), but must deduct the decrease (\$5,000 [\$20,000 minus \$15,000]) from the 2009 passthrough as follows: \$35,000 (2009 utility costs) minus \$15,000 (1986 utility costs) = \$20,000 minus \$5,000 (decrease between 2003 and 2007) = \$15,000 new utility passthrough.

(d) Determination of "Comparison Year"

For purposes of this section, the "comparison year" in all cases shall be the calendar year immediately preceding the filing of the landlord's Utility Passthrough Calculation Worksheet or Petition for Approval of the Utility Passthrough.

(e) Petition Required for Certain Utility Passthroughs

Effective January 1, 2009, the landlord is required to file a Petition for Approval of Utility Passthrough when using a comparison of utility costs for the prior two calendar years (e.g. 2007/2008 in 2009, 2008/2009 in 2010, 2009/2010 in 2011, etc.). The petition shall be on a form prescribed by the Board. The petition shall specify the units on the property that are subject to the petition. The petition will be decided without a hearing unless the Administrative Law Judge determines that a hearing is required.

(e) (f) Where the landlord is required to file a Petition for Approval of Utility Passthrough, the landlord must file a the petition before giving legal notice of a rent increase for a utility passthrough. The petition must be filed no more than twelve months after the "comparison year" listed in the petition. The notice of rent increase shall be in conformance with the requirements set forth in Section 4.10 above and shall further include the dollar amount requested for the utility passthrough. This increase for the utility passthrough shall be inoperative unless and until the petition is approved by the Administrative Law Judge. Any amounts approved by the Administrative Law Judge shall relate back to the effective date of the legal notice, if given. A landlord may choose instead not to serve legal notice of a proposed utility passthrough until after the decision of the Administrative Law Judge is rendered. In any event, no rent increase approved by the Administrative Law for a utility passthrough shall become effective until the tenant's anniversary date.

(g) Petition Not Required for Certain Utility Passthroughs

Effective January 1, 2009, the landlord is not required to file a Petition for Approval of Utility Passthrough using a comparison of costs for years other than the prior two calendar years. For example, in 2009, the landlord need not file a petition for "base year" 2003, 2004, 2005 or 2006. However, in order to impose a utility passthrough, the landlord must comply with the following requirements:





(i) The landlord shall file a Utility Passthrough Calculation Worksheet with the Rent Board for each different "base year" used, on a form prescribed by the Board, that shows how the passthrough was calculated. The Worksheet shall be filed within twelve months of the "comparison year" used in calculating the amount of the passthrough. The Rent Board shall review ten percent (10%) of all Worksheets filed with the Board. In addition, if there is no prior utility passthrough petition on file for a property for which a Worksheet is filed, the Rent Board shall review at least one Worksheet for that property.

(ii) The landlord must file the Worksheet with the Board before giving legal notice of a rent increase for a utility passthrough. The notice of rent increase shall be in conformance with the requirements set forth in Section 4.10 above and shall further include the dollar amount requested for the utility passthrough. The landlord must provide the tenant with a file-stamped copy of the Utility Passthrough Calculation Worksheet at the time of service of the notice of rent increase.

(iii) A tenant who receives a utility passthrough under this subsection (g) may file a hardship application with the Board within one year of the effective date of the passthrough, and may be granted relief from all or part of such passthrough based on hardship.

(g) (h) Laundry Facilities

Where the utility bills include the cost of gas and/or electricity for laundry facilities and the landlord charges a user fee for the laundry facilities, the landlord may not pass through any increase in the building's cost of utilities unless the landlord complies with one of the following subsections:

(i) where the laundry facilities are separately metered in both the "base year" and "comparison year", the landlord shall not include the utility costs for the laundry facilities in the utility passthrough calculation; or

(ii) where the laundry facilities are not separately metered in both the "base year" and the "comparison year" and there is a third party vendor that collects the user fees from the laundry facilities, the landlord shall deduct the income actually received by the landlord from the third party vendor from the total utility costs for the building; or

(iii) where the laundry facilities are not separately metered in both the "base year" and the "comparison year" and there is not a third party vendor that collects the user fees from the laundry facilities, the landlord shall deduct 50% of the user fees actually collected by the landlord from the total utility costs for the building; or

(iv) where the laundry facilities are not separately metered in both the "base year" and "comparison year", the landlord shall deduct the actual costs of utilities that serve such laundry facilities, ~~if proved by the landlord~~ using a methodology that has been approved by the Rent Board.

~~(h)~~ (i) Where the utility bills include the cost of gas and/or electricity for laundry facilities and the laundry facilities are not available to or operated for the benefit of the tenant, and the laundry facilities are not separately metered in both the "base year" and "comparison year", the landlord may not pass through to that tenant any increase in the building's cost of utilities.

(+) (i) Calculation of the Utility Passthrough

The landlord shall calculate the amount of the utility passthrough as follows:

(i) Compile the utility bills for the "base year" and the "comparison year" as defined in subsections (b), (c) and (d) above. The utility passthrough shall be based on actual costs incurred by the landlord during the relevant calendar years, regardless of when the utility bill was received or paid.

(ii) Calculate the total utility cost for the "base year" and the total utility cost for the "comparison year".

(iii) Where the laundry facilities are not separately metered in both the





"base year" and the "comparison year", compile evidence of and calculate the actual cost of utilities that serve the laundry facilities in the "base year" and the "comparison year".

(A) Where the landlord cannot prove the actual cost of utilities that serve the laundry facilities and a third party vendor collects the user fees from the laundry facilities, compile evidence of and calculate the income actually received by the landlord from the third party vendor for the use of the laundry facilities in the "base year" and the "comparison year".

(B) Where the landlord cannot prove the actual cost of utilities that serve the laundry facilities and the landlord collects the user fees from the laundry facilities, compile evidence of the user fees actually collected by the landlord for the use of the laundry facilities in the "base year" and the "comparison year" and calculate 50% of the amount collected.

(iv) Where the laundry facilities are not separately metered in both the "base year" and the "comparison year", subtract the utility costs for the laundry facilities, as calculated in subsection (iii) above, from the total utility cost for the "base year" and the total utility cost for the "comparison year".

(v) Subtract the total "base year" utility cost (excluding utility costs for the laundry facilities) from the total "comparison year" utility cost (excluding utility costs for the laundry facilities) to get the utility cost increase. If there is no increase or if there has been a decrease, no passthrough is allowed.

(vi) Divide the resulting figure, if greater than zero, by twelve (12) to determine the average monthly utility increase for the entire property.

(vii) Divide the average monthly utility increase by the number of rooms in the property to get the amount of the utility passthrough that may be imposed for each room. For purposes of this section, the number of rooms in a property shall be calculated by presuming that single rooms without kitchens are one room units, studios are two room units, one bedroom units without a separate dining room are three room units, and so on. Each parking space and garage space in the building which is included in a tenant's rental or for which a user fee is charged shall be counted as one room. Areas used for commercial purposes but for which no user fee is charged to the tenants, including but not limited to management offices and retail space, shall be included in the room count in a manner that most reasonably takes into account the size of the space and its utility usage.

(viii) To get the monthly utility passthrough for a unit, add the number of rooms in the unit to the number of rooms for parking and/or garage spaces included in the tenant's rental or for which a user fee is paid by the tenant, and multiply that total number of rooms by the monthly utility increase per room.

(~~f~~) (k) No landlord may pass through any increase in the cost of utilities to a tenant until the tenant has occupied the unit in the subject property for one continuous year.

(~~g~~) (l) Each utility passthrough shall apply only for the twelve-month period after it is imposed.

(~~h~~) (m) Nothing in this section or in these Rules and Regulations shall be interpreted as requiring any landlord to pass through any utility increase or to increase any tenant's rent.

(~~i~~) (n) The amount of rent due from the tenant for any utility passthrough shall be due on the same date as a rent payment normally would be due.

(~~m~~) (o) A utility passthrough may be imposed only at the time of an annual rent increase. However, no amount passed through to the tenant as a utility increase shall be included in the tenant's base rent for purposes of calculation of the amount of rent increases allowable under the Ordinance and these Rules and Regulations.

(~~n~~) (p) The provisions of this Section shall be deemed a part of every rental agreement or lease, written or oral, for the possession of a rental unit subject to the



Ordinance unless the landlord and the tenant agree that the landlord will not pass through any utility increases, in which case such agreement will be binding on the landlord and on any successor owner of the property.

(e) (q) Where a utility increase has been lawfully passed through to the tenant, a change in the ownership of the property in which the tenant's unit is located will not affect the tenant's liability to pay the amount passed through.

### **Section 10.13 Improper Utility Passthrough**

(Added August 24, 2004)

(a) The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served after November 1, 2004 where a Petition For Approval Of The Utility Passthrough was required to be filed under Section 6.16 of these Rules:

(a) (i) A tenant may petition for an arbitration hearing if the landlord has increased the tenant's rent based on an increase in utility costs, but (1) has failed to file a petition for approval of the utility passthrough pursuant to Section 6.16 of these Rules, or (2) has failed to discontinue the utility passthrough after twelve months.

(b) (ii) The landlord shall have the burden of proving that the utility passthrough has been approved and/or imposed in accordance with Section 6.16 of these Rules.

(c) (iii) A petition based on this section shall be accompanied by the notice of increase.

(b) The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served after January 1, 2009 where a Petition For Approval Of The Utility Passthrough was not required to be filed under Section 6.16:

(i) A tenant may petition for an arbitration hearing if the landlord has increased the tenant's rent based on an increase in utility costs, but (1) did not file a Utility Passthrough Calculation Worksheet with the Rent Board pursuant to Section 6.16 of these Rules; or (2) did not serve the tenant with a copy of the Utility Passthrough Calculation Worksheet, date-stamped by the Rent Board, with the notice of increase for the utility passthrough; or (3) did not properly calculate the utility passthrough or used an incorrect room count; or (4) did not discontinue the utility passthrough after twelve months.

(ii) The landlord shall have the burden of proving that the utility passthrough has been approved and/or imposed in accordance with Section 6.16 of these Rules.

(iii) A petition based on this section shall be accompanied by the notice of increase.

The Public Hearing will be held on December 16<sup>th</sup> at 6:30 p.m.

### **IV. Remarks from the Public (cont.)**

G. Chi Hom, speaking on behalf of the tenants at 1142 Jackson #4 (AT080116), said that he was "displeased" with the Board's denial of the tenants' appeal. Mr. Hom said that there was no quiet enjoyment of the unit when the landlord was installing a second bathroom in the unit upstairs. He told the Board that the tenants are an immigrant family who don't necessarily want to file complaints. He asked that the Commissioners put this building on their radar



because he believes that the landlord is trying to get rid of below-market tenants. He also told the Board that a downstairs unit is uninhabitable.

H. Clay Tominaga, Managing Director of the Golden Gateway complex, said that he believed a "good faith compromise" was reached regarding utility passthroughs five years ago. Mr. Tominaga said that no one has spoken to Golden Gateway management about the proposed changes, although they will be affected. Mr. Tominaga estimated that the proposed changes would result in an approximate \$50-100,000 "hit." He also said that there is no history as to why the law was changed.

I. Golden Gateway tenant Phil Page expressed his belief that indexing of the base rent with the utility costs each year would be the most logical and fair method for landlords and tenants. Mr. Page said that indexing would have saved Golden Gateway tenants \$800-900,000. While the new proposal will provide some relief, Mr. Page would prefer indexing.

J. Golden Gateway tenant Bob Coleman said that he didn't hear any discussion of asking the Golden Gateway Center to disgorge the "windfall" they received or make restitution to the tenants for extra monies they have received over the past few years. He said that their threat of legal action should be seen for what it is.

IX. Calendar Items

December 9, 2008 – NO MEETING

December 16, 2008

3 appeal considerations

6:30 Public Hearing: Utility Passthrough Regulations 6.16 and 10.13

X. Adjournment

President Gruber adjourned the meeting at 8:35 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.



City and County of San Francisco



DAVID GRUBER  
PRESIDENT

Residential Rent Stabilization  
and Arbitration Board  
**NOTICE OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM  
MAYOR

DEEENE WOLE  
EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,  
December 16, 2008

25 Van Ness Avenue, #70, Lower Level

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHAE  
CATHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

**AGENDA**

- I. Call to Order  
II. Roll Call  
III. Approval of the Minutes  
IV. Remarks from the Public

2:30 p.m. mtg  
**GOVERNMENT  
DOCUMENTS DEPT**

**DEC 12 2008**

**SAN FRANCISCO  
PUBLIC LIBRARY**

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 4904 – 3<sup>rd</sup> St. AL080120

The landlord appeals the decision granting a claim of decreased housing services.

B. 4904 – 3<sup>rd</sup> St. AL080121

The landlord appeals the decision granting a claim of decreased housing services.

C. 201 – 11<sup>th</sup> Ave. #9 AL080119

The landlord appeals the decision partially certifying capital improvement costs.

D. 861 Post St. #7 AL080118

The landlord appeals the decision granting a claim of decreased housing services.

VI. Public Hearing







6:30      Utility Passthrough Regulations 6.16 and 10.13

VII.      Communications

VIII.     Director's Report

IX.      Old Business

IV.      Remarks from the Public (cont.)

**NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.**

X.      New Business

XI.     Calendar Items

XII.    Adjournment

**NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.**



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December 5, 2008

Residential Rent Stabilization  
and Arbitration Board

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

**NOTICE OF PUBLIC HEARING**

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CATHY MOSBRUCKER  
NIVEO MOSSER  
BARTHOLOMEW MURPHY

<b>DATE:</b>	<b>DECEMBER 16, 2008</b>
<b>TIME:</b>	<b>6:30 P.M.</b>
<b>PLACE:</b>	<b>25 VAN NESS AVENUE (AT MARKET STREET) SUITE 70, LOWER LEVEL SAN FRANCISCO, CALIFORNIA</b>

**THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.**

**THE COMMISSION IS TAKING PUBLIC COMMENT ON PROPOSED CHANGES TO THE UTILITY PASSTHROUGH REGULATIONS, SPECIFICALLY THE AMENDMENT OF SECTIONS 6.16 AND 10.13, WHICH ARE ATTACHED TO THIS NOTICE.**

The proposed changes would: eliminate all pre-2002 base years for utility passthroughs calculated on or after January 1, 2009, which would affect the Golden Gateway Center and eleven other properties. Tenants with pre-2002 base years would have a base year of 2003 commencing January 1, 2009. A new base year would be established for all tenancies at the end of every fifth calendar year after the initial base year. No petition would be required except where the landlord is comparing utility costs for the two most recent calendar years. For other base years used, the landlord would be required to file a Utility Passthrough Calculation Worksheet with the Board, which would be provided to the tenant; 10% of these would be reviewed, as well as at least one Worksheet for properties with no prior utility passthrough petition on file; and tenants would be able to file a hardship application within one year of the effective date of the passthrough. Tenants would be able to file petitions challenging utility





passthroughs on several grounds within one year of the effective date of the passthrough.

You may either comment at the Public Hearing and/or submit written comments. If you would like to submit written comments, it is requested that they be received at the Department sufficiently in advance of the meeting so that the Commissioners can review them prior to the hearing. Written comments may also be submitted at the hearing. Please submit 12 copies of your comments in order to facilitate their distribution. You will be able to address the Commissioners during the public comment period at the hearing.

**PROPOSED AMENDMENTS TO THE RENT BOARD RULES AND  
REGULATIONS REGARDING UTILITY PASSTHROUGHS**  
***[additions in underline; deletions in strikethrough]***

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**Section 6.16 Utility Passthrough**

(Added August 24, 2004; Subsection (i) amended September 21, 2004)

The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served after November 1, 2004:

(a) Where a landlord pays for gas, electricity and/or steam provided directly to the unit occupied by the tenant and/or to the common areas of the property in which the unit is located, and seeks to recover the increase in the cost of these utilities from the tenant, the landlord may pass through the increased costs of the utilities between the "base year" and the comparison year, as set forth below. ~~must file a petition for approval of the utility passthrough on a form prescribed by the Board. The petition shall specify the units on the property that are subject to the petition. The petition will be decided without a hearing unless the Administrative Law Judge determines that a hearing is required.~~



(b) Determination of Initial "base year"

(i) For all tenancies existing on December 31, 2003, the initial "base year" for purposes of this section shall be calendar year 2002 with the following exception:

(ii) (A) ~~However, For utility passthrough petitions filed prior to January 1, 2009,~~ where a utility passthrough is was in effect for a tenancy on November 1, 2004, the landlord ~~may~~ could elect to use calendar year 2002 as the initial "base year" or elect to continue to use the earlier "base year" ~~for all future utility passthrough calculations,~~ provided that the landlord petitioned the Board for approval of the earlier "base year" and the Board ~~determines~~ determined that the earlier "base year" is was proper under Section 4.11 of these Rules.

(B) For utility passthrough petitions and Utility Passthrough Calculation Worksheets filed on or after January 1, 2009, the initial "base year" for all tenancies with an approved earlier "base year" shall be calendar year 2003.

~~(iii)~~(ii) For all new tenancies commencing after December 31, 2003, the initial "base year" shall be the calendar year immediately preceding the year of the inception of the tenancy.

~~(iv)~~(iii) A landlord may petition the Board for approval of an alternate "base year" if the landlord became an owner of record after December 31, 2002 and demonstrates a good faith, but unsuccessful, effort to obtain the utility bills from the former landlord and/or the utility company that are necessary to establish the "base-year" utility costs required by subsections (b)(i) or (b)(ii) ~~or~~





(b)(iii). The Board will not approve an alternate "base year" that creates exaggerated results unless the proposed alternate "base year" coincides with the landlord's first full calendar year of ownership.

(c) Subsequent Adjustments to Initial "base year"

Different tenants in the same property may have different initial "base years" depending on when they moved into the property or whether the Board has approved use of an earlier "base year" pursuant to subsection (b)(ii)(i) above or use of an alternate "base year" pursuant to subsection (b)(iv)(iii) above. The initial "base year" utility costs shall be adjusted every five years as follows:

(i) — ~~Where the initial "base year" is 2002 or later, a~~ A new "base year" is established at the end of every fifth calendar year after the initial "base year". For example, where the initial "base year" is 2002, the new "base year" shall be 2007 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2009 and December 31, 2013. If the tenancy continues for an additional five years, the "base year" will become 2012 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2014 and December 31, 2018, and so on. For another example, where the initial "base year" is 2003, including those tenancies that had an earlier "base year" prior to January 1, 2009, the new "base year" shall be 2008 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2010 and December 31, 2010. If the tenancy continues for an additional five years, the "base year" will become 2013 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2015 and December 31, 2019, and so on.



For another example, where the initial "base year" is 2004, the new "base year" shall be 2009 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2011 and December 31, 2015. If the tenancy continues for an additional five years, the "base year" will become 2014 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2016 and December 31, 2020.

(ii) ~~Where the initial "base year" is prior to 2002 and has been approved by the Board pursuant to subsection (b)(ii) above, the landlord may elect to keep said "base year" for purposes of future utility passthrough calculations without regard to subsection (c)(i) above. However, in such a case, the landlord must adjust the "base year" utility costs every five years beginning with utility passthrough petitions filed in 2009. The first "base year" adjustment shall equal the difference, if more than zero, between 2003 utility costs and 2007 utility costs, and it shall be added to the "base year" utility cost used by the landlord. This "base year" adjustment shall be in effect for petitions filed between January 1, 2009 and December 31, 2013. Every fifth year thereafter (i.e. 2014, 2019, etc.), the landlord's petition shall include another "base year" adjustment equal to the difference in utility costs, if more than zero, for each subsequent five year period (e.g., 2008 and 2012, 2013 and 2017, etc.). If utility costs decrease during any five year adjustment period, then no adjustment shall be required to the "base year" utility costs, but the landlord must deduct the amount of the decrease from the difference between the initial "base year" utility costs and the new "comparison year" utility costs. For example:~~

(A) ~~Suppose a tenant's approved "base year" is 1986,~~



and the 1986 utility costs are \$15,000. In 2009, the landlord must calculate the difference between the 2003 utility costs (\$20,000) and the 2007 utility costs (\$30,000). Since utility costs increased between 2003 and 2007, the landlord must add the increase (\$10,000 [\$30,000 minus \$20,000]) to the initial "base year" utility costs (\$15,000) and then compare the adjusted "base year" utility costs (\$25,000 [\$10,000 + \$15,000]) to the 2009 "comparison year" utility costs (\$35,000) in order to calculate the new utility passthrough (\$10,000 [\$35,000 minus \$25,000]).

(B) — If utility costs have decreased (e.g., 2003's utility costs = \$20,000 and 2007's utility costs = \$15,000), then the landlord does not adjust the 1986 "base year" utility costs (\$15,000), but must deduct the decrease (\$5,000 [\$20,000 minus \$15,000]) from the 2009 passthrough as follows:—  
 $\$35,000$  (2009 utility costs) minus  $\$15,000$  (1986 utility costs) =  $\$20,000$  minus  $\$5,000$  (decrease between 2003 and 2007) =  $\$15,000$  new utility passthrough.

(d) Determination of "Comparison Year"

For purposes of this section, the "comparison year" in all cases shall be the calendar year immediately preceding the filing of the landlord's Utility Passthrough Calculation Worksheet or Petition for Approval of the Utility Passthrough.

(e) Petition Required for Certain Utility Passthroughs

Effective January 1, 2009, the landlord is required to file a Petition for Approval of Utility Passthrough when using a comparison of utility costs for the prior two calendar years (e.g. 2007/2008 in 2009, 2008/2009 in 2010, 2009/2010



in 2011, etc.). The petition shall be on a form prescribed by the Board. The petition shall specify the units on the property that are subject to the petition. The petition will be decided without a hearing unless the Administrative Law Judge determines that a hearing is required.

(e) (f) Where the landlord is required to file a Petition for Approval of Utility Passthrough, T the landlord must file a the petition before giving legal notice of a rent increase for a utility passthrough. The petition must be filed no more than twelve months after the "comparison year" listed in the petition. The notice of rent increase shall be in conformance with the requirements set forth in Section 4.10 above and shall further include the dollar amount requested for the utility passthrough. This increase for the utility passthrough shall be inoperative unless and until the petition is approved by the Administrative Law Judge. Any amounts approved by the Administrative Law Judge shall relate back to the effective date of the legal notice, if given. A landlord may choose instead not to serve legal notice of a proposed utility passthrough until after the decision of the Administrative Law Judge is rendered. In any event, no rent increase approved by the Administrative Law for a utility passthrough shall become effective until the tenant's anniversary date.

(g) Petition Not Required for Certain Utility Passthroughs

Effective January 1, 2009, the landlord is not required to file a Petition for Approval of Utility Passthrough using a comparison of costs for years other than the prior two calendar years. For example, in 2009, the landlord need not file a petition for "base year" 2003, 2004, 2005 or 2006. However, in order to impose a





utility passthrough, the landlord must comply with the following requirements:

(i) The landlord shall file a Utility Passthrough Calculation Worksheet with the Rent Board for each different "base year" used, on a form prescribed by the Board, that shows how the passthrough was calculated. The Worksheet shall be filed within twelve months of the "comparison year" used in calculating the amount of the passthrough. The Rent Board shall review ten percent (10%) of all Worksheets filed with the Board. In addition, if there is no prior utility passthrough petition on file for a property for which a Worksheet is filed, the Rent Board shall review at least one Worksheet for that property.

(ii) The landlord must file the Worksheet with the Board before giving legal notice of a rent increase for a utility passthrough. The notice of rent increase shall be in conformance with the requirements set forth in Section 4.10 above and shall further include the dollar amount requested for the utility passthrough. The landlord must provide the tenant with a file-stamped copy of the Utility Passthrough Calculation Worksheet at the time of service of the notice of rent increase.

(iii) A tenant who receives a utility passthrough under this subsection (g) may file a hardship application with the Board within one year of the effective date of the passthrough, and may be granted relief from all or part of such passthrough based on hardship.

(g) (h) Laundry Facilities

Where the utility bills include the cost of gas and/or electricity for laundry facilities and the landlord charges a user fee for the laundry facilities, the landlord



may not pass through any increase in the building's cost of utilities unless the landlord complies with one of the following subsections:

(i) where the laundry facilities are separately metered in both the "base year" and "comparison year", the landlord shall not include the utility costs for the laundry facilities in the utility passthrough calculation; or

(ii) where the laundry facilities are not separately metered in both the "base year" and the "comparison year" and there is a third party vendor that collects the user fees from the laundry facilities, the landlord shall deduct the income actually received by the landlord from the third party vendor from the total utility costs for the building; or

(iii) where the laundry facilities are not separately metered in both the "base year" and the "comparison year" and there is not a third party vendor that collects the user fees from the laundry facilities, the landlord shall deduct 50% of the user fees actually collected by the landlord from the total utility costs for the building; or

(iv) where the laundry facilities are not separately metered in both the "base year" and "comparison year", the landlord shall deduct the actual costs of utilities that serve such laundry facilities, ~~if proved by the landlord~~ using a methodology that has been approved by the Rent Board.

~~(h)~~ (i) Where the utility bills include the cost of gas and/or electricity for laundry facilities and the laundry facilities are not available to or operated for the benefit of the tenant, and the laundry facilities are not separately metered in both the "base year" and "comparison year", the landlord may not pass through to that



tenant any increase in the building's cost of utilities.

**(i) Calculation of the Utility Passthrough**

The landlord shall calculate the amount of the utility passthrough as follows:

(i) Compile the utility bills for the "base year" and the "comparison year" as defined in subsections (b), (c) and (d) above. The utility passthrough shall be based on actual costs incurred by the landlord during the relevant calendar years, regardless of when the utility bill was received or paid.

(ii) Calculate the total utility cost for the "base year" and the total utility cost for the "comparison year".

(iii) Where the laundry facilities are not separately metered in both the "base year" and the "comparison year", compile evidence of and calculate the actual cost of utilities that serve the laundry facilities in the "base year" and the "comparison year".

(A) Where the landlord cannot prove the actual cost of utilities that serve the laundry facilities and a third party vendor collects the user fees from the laundry facilities, compile evidence of and calculate the income actually received by the landlord from the third party vendor for the use of the laundry facilities in the "base year" and the "comparison year".

(B) Where the landlord cannot prove the actual cost of utilities that serve the laundry facilities and the landlord collects the user fees from the laundry facilities, compile evidence of the user fees actually collected by the landlord for the use of the laundry facilities in the "base year" and the



"comparison year" and calculate 50% of the amount collected.

(iv) Where the laundry facilities are not separately metered in both the "base year" and the "comparison year", subtract the utility costs for the laundry facilities, as calculated in subsection (iii) above, from the total utility cost for the "base year" and the total utility cost for the "comparison year".

(v) Subtract the total "base year" utility cost (excluding utility costs for the laundry facilities) from the total "comparison year" utility cost (excluding utility costs for the laundry facilities) to get the utility cost increase. If there is no increase or if there has been a decrease, no passthrough is allowed.

(vi) Divide the resulting figure, if greater than zero, by twelve (12) to determine the average monthly utility increase for the entire property.

(vii) Divide the average monthly utility increase by the number of rooms in the property to get the amount of the utility passthrough that may be imposed for each room. For purposes of this section, the number of rooms in a property shall be calculated by presuming that single rooms without kitchens are one room units, studios are two room units, one bedroom units without a separate dining room are three room units, and so on. Each parking space and garage space in the building which is included in a tenant's rental or for which a user fee is charged shall be counted as one room. Areas used for commercial purposes but for which no user fee is charged to the tenants, including but not limited to management offices and retail space, shall be included in the room count in a manner that most reasonably takes into account the size of the space and its utility usage.





(viii) To get the monthly utility passthrough for a unit, add the number of rooms in the unit to the number of rooms for parking and/or garage spaces included in the tenant's rental or for which a user fee is paid by the tenant, and multiply that total number of rooms by the monthly utility increase per room.

(f) ~~(k)~~ No landlord may pass through any increase in the cost of utilities to a tenant until the tenant has occupied the unit in the subject property for one continuous year.

(j) ~~(l)~~ Each utility passthrough shall apply only for the twelve-month period after it is imposed.

(k) ~~(m)~~ Nothing in this section or in these Rules and Regulations shall be interpreted as requiring any landlord to pass through any utility increase or to increase any tenant's rent.

(l) ~~(n)~~ The amount of rent due from the tenant for any utility passthrough shall be due on the same date as a rent payment normally would be due.

~~(m)~~ ~~(o)~~ A utility passthrough may be imposed only at the time of an annual rent increase. However, no amount passed through to the tenant as a utility increase shall be included in the tenant's base rent for purposes of calculation of the amount of rent increases allowable under the Ordinance and these Rules and Regulations.

~~(n)~~ ~~(p)~~ The provisions of this Section shall be deemed a part of every rental agreement or lease, written or oral, for the possession of a rental unit subject to the Ordinance unless the landlord and the tenant agree that the



landlord will not pass through any utility increases, in which case such agreement will be binding on the landlord and on any successor owner of the property.

(e) (q) Where a utility increase has been lawfully passed through to the tenant, a change in the ownership of the property in which the tenant's unit is located will not affect the tenant's liability to pay the amount passed through.

**Section 10.13 Improper Utility Passthrough**

(Added August 24, 2004)

(a) The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served after November 1, 2004 where a Petition For Approval Of The Utility Passthrough was required to be filed under Section 6.16 of these Rules:

(a) (i) A tenant may petition for an arbitration hearing if the landlord has increased the tenant's rent based on an increase in utility costs, but (1) has failed to file a petition for approval of the utility passthrough pursuant to Section 6.16 of these Rules, or (2) has failed to discontinue the utility passthrough after twelve months.

(b) (ii) The landlord shall have the burden of proving that the utility passthrough has been approved and/or imposed in accordance with Section 6.16 of these Rules.

(e) (iii) A petition based on this section shall be accompanied by the notice of increase.

(b) The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served after January 1, 2009 where a Petition For Approval Of The Utility Passthrough was not required



to be filed under Section 6.16:

(i) A tenant may petition for an arbitration hearing if the landlord has increased the tenant's rent based on an increase in utility costs, but (1) did not file a Utility Passthrough Calculation Worksheet with the Rent Board pursuant to Section 6.16 of these Rules; or (2) did not serve the tenant with a copy of the Utility Passthrough Calculation Worksheet, date-stamped by the Rent Board, with the notice of increase for the utility passthrough; or (3) did not properly calculate the utility passthrough or used an incorrect room count; or (4) did not discontinue the utility passthrough after twelve months.

(ii) The landlord shall have the burden of proving that the utility passthrough has been approved and/or imposed in accordance with Section 6.16 of these Rules.

(iii) A petition based on this section shall be accompanied by the notice of increase.



City and County of San Francisco

Residential Rent Stabilization  
and Arbitration Board



DAVID GRUBER  
PRESIDENT

MINUTES OF THE REGULAR MEETING OF  
THE SAN FRANCISCO RESIDENTIAL RENT  
STABILIZATION & ARBITRATION BOARD,

GAVIN NEWSOM  
MAYOR

DELENE WOLF  
EXECUTIVE DIRECTOR

Tuesday, December 16, 2008 at 6:00 p.m. at  
25 Van Ness Avenue, Suite 70, Lower Level

BROOKS BEARD  
DAVE CROW  
DEBORAH HENDERSON  
JIM HURLEY  
ANTHONY JUSTMAN  
POLLY MARSHALL  
CALHY MOSBRUCKER  
NEVEO MOSSER  
BARTHOLOMEW MURPHY

Call to Order

President Gruber called the meeting to order at 6:01 p.m.

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II. Roll Call

Commissioners Present: Beard; Crow; Gruber; Henderson; Hurley;  
Mosbrucker; Murphy.  
Commissioners not Present: Justman; Mosser.  
Staff Present: Gartzman; Lee; Wolf.

Commissioner Marshall appeared on the record at 6:30 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of December 2, 2008.  
(Murphy/Mosbrucker: 5-0)

IV. Consideration of Appeals

A. 4904 – 3<sup>rd</sup> St.

AL080120

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$100.00 per month due to the lack of heat in the unit and \$35.00 per month for a defective refrigerator. The current landlord requests a review of the rent reductions granted before he became the owner of the property, filing the appeal four years and eight months late.

MSC: To find no good cause for the late filing of the appeal. The  
Decision is therefore final. (Mosbrucker/Henderson: 5-0)







B. 4904 – 3<sup>rd</sup> St.

AL080121

The landlord's appeal was filed four and one-half months late because the landlord claims not to have received a copy of the Notice of Hearing nor the Decision in the case.

MSC: To find good cause for the late filing of the appeal.  
(Mosbrucker/Murphy: 5-0)

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$1,214.50 due to habitability defects on the premises. The landlord, who failed to appear at the hearing, appeals on the grounds that the rent reductions granted are excessive; and most of the defects have been corrected but the decision makes it impossible to restore the prior base rent amount.

MSC: To accept the appeal and remand the case for a new hearing;  
the reduced base rent remains in effect until a new decision is  
issued. (Mosbrucker/Murphy: 5-0)

C. 201 – 11<sup>th</sup> Ave. #9

AL080119

The landlord's petition for certification of capital improvement costs to 4 of 12 units was granted, in part. On appeal, the landlord claims that \$58.00 in capital improvement costs should not have been disallowed to the tenants in unit #9 pursuant to the 6-Month Rule, because there was an error in the petition as to their move-in date.

MSC: To accept the appeal and remand the case to the Administrative  
Law Judge for a hearing to determine whether this is a  
continuing tenancy and, if so, the date the capital improvement  
work began. (Mosbrucker/Henderson: 5-0)

D. 861 Post St. #7

AL080118

The tenant's petition alleging decreased housing services due to the presence of high humidity and mold in the unit was granted and the landlord was found liable to the tenant in the amount of \$1,575.00. On appeal, the landlord claims that: the presence of humidity in the unit does not constitute a reduction in services; the tenant failed to take all the steps necessary for eradication of the mold; the landlord cannot remedy the problem without the tenant's cooperation and, therefore, will never be able to reinstitute the full base rent; and the rent reduction is excessive for the extent of the problem.



MSC: To deny the appeal. (Murphy/Henderson: 5-0)

V. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The Notice of Public Hearing and comments from members of the public on the proposed amendments to Rules Sections 6.16 and 10.13 pertaining to utility passthroughs.

B. Budget documents from a Briefing for Commission Presidents by the Mayor's Budget Office.

C. An article from the S.F. Examiner regarding a drop in rents.

D. The office workload statistics for the month of November, 2008.

VI. Director's Report

Executive Director Wolf told the Board about a budget briefing that she and President Gruber attended with the Mayor and members of his budget staff. She also let them know that she would be participating in a Press Conference with the Assessor's Office and the Housing Rights Committee on December 17<sup>th</sup> regarding the effects of foreclosure on tenants.

VII. Public Hearing

Utility Passthrough Regulations 6.16 and 10.13

The Board convened a Public Hearing on proposed changes to the Rules and Regulations regarding calculation of utility passthroughs at 6:31 p.m. Thirteen individuals spoke as follows below:

1. Donna Chan, a Community Organizer with the Chinatown Community Development Corporation, spoke in favor of the proposed amendments. Ms. Chan said that their organization is seeing more economically distressed clients, for whom these passthroughs are an "unfair burden."

2. Ton Kuk Wong, a representative of the S.F. Community Tenants' Association, told the Board that it is difficult for tenants to afford additional rent increases.



3. The Gateway (formerly Golden Gateway) tenant Dave Burnett spoke in support of the proposed changes. Mr. Burnett said that his rent has gone up exactly the same amount as the landlord's utility bills, so the landlord is not disadvantaged. Mr. Burnett thanked the Board for their work on this issue.

4. Tenant Carolyn Blair of Northpoint Apartments said that she had questions regarding the proposal, since many tenants are paying their own utilities. Ms. Blair told the Board that some tenants are paying 75% of their income towards rent. She also feels that PG&E "doesn't deserve a dime after defeating public power."

5. Phil Page, President of The Golden Gateway Tenants' Association, urged the Board's approval of the proposed amendments. Mr. Page does not believe that the proposal constitutes a permanent solution to the problem, but that it provides immediate relief. Mr. Page told the Commissioners that the "flawed" utility passthrough scheme has transferred \$1,435.00 in double billing over the past four years, multiplied by the number of units in the complex. Mr. Page believes this to be "legal robbery." Mr. Page is still concerned that the revision doesn't recognize that utilities are imbedded in a tenant's base rent and should go up by the amount of the annual rent increase.

6. The Gateway tenant Arthur Samuelson supported the prior speaker.

7. The Gateway tenant Brian Browne provided the Board with an illustration of what he believes the State's Public Utilities Commission's approach to regulating utilities would be. Mr. Browne believes he has overpaid \$27,000 since 2005, and told the Board they should consider a revenue requirements approach to ratemaking. Mr. Browne can't figure out why the landlord should get any passthrough at all and feels that the proposed amendments are an insufficient move in the right direction.

8. The Gateway tenant Ernestine Weiss feels that this is all unnecessary because utilities were included in her base rent at the time she moved in. Since the Consumer Price Index includes utilities, any additional passthrough constitutes "double-dipping." Ms. Weiss said that "hotelization" means The Gateway tenants are being charged for commercial tenants and that the landlord should have to provide a profit/loss statement.

9. The Gateway tenant Bobby Coleman urged support of the Tenants' Association proposal as the "least unjust." Mr. Coleman said he would like to see "more of a bone" thrown to the tenants, since he believes that many of the tenants who need it don't utilize the hardship appeal provisions of the rent law.



10. Gateway tenant Brigit Boylan said that prior base years are "ridiculous," since they are only utilized by the Gateway and eleven other landlords. Ms. Boylan said that the landlord just jack hammered the plaza unnecessarily, and should be making energy improvements instead. Ms. Boylan believes that the Board is encouraging the landlord to not think about energy costs, since they can just pass them on to the tenants.

11. Gateway tenant Lamar Johnson reminded the Board that tenants are the largest sector of the San Francisco population and wished them a healthy and happy holiday.

12. Clay Tominaga, the Managing Director of the Gateway, informed the Board that the complex does not have mostly corporate rentals. He believes that the requirement that 2003 be the next base year is "arbitrary" and provided the Board with calculations showing unadjusted vs. indexed passthroughs. He also informed the Board that rolling the base year forward to 2009 would cost The Gateway \$90,000; using 2003 as a base year constitutes a loss of \$147,000; and indexing (adding 60% of the increase in the CPI to the base year utility costs) equals a \$12,000 loss, but is also more fair. Mr. Tominaga conceded that there is some validity to the inflation argument, so he supports indexing as a compromise. He feels that a 2003 base year would penalize The Gateway for having records.

13. Mitchell Omerberg of the Affordable Housing Alliance said that tenants rent a place with utilities included, and that some portion of the rent covers that cost. Although this becomes inadequate over time, the tenant's contribution must still be taken into account. Mr. Omerberg reminded the Board that they had this debate five years ago, but indexing was rejected for something simpler. However, one group of tenants got no relief. Mr. Omerberg recommended extending the solution arrived at five years ago to everyone. He emphasized that something should be done soon.

After the conclusion of the Public Hearing at 7:01 p.m., Commissioner Beard explained his proposed amendment to Section 6.16(g), which clarifies what would transpire after a Worksheet is reviewed, if there is found to be an issue. Commissioner Marshall introduced her proposed amendment to 6.16(g), which clarifies when a Worksheet would get filed. The Board then discussed the relative merits of the various proposals, with Commissioner Murphy speaking in favor of indexing, which he said would treat everyone fairly, under the same system. Commissioner Hurley also spoke in support of indexing as more realistic and because moving the base year forward every five years is "arbitrary." Commissioner Henderson was extremely concerned that anything the Board adopted should promote energy efficiency. Commissioner Mosbrucker stressed the importance of staff review for first time filers. Commissioner Marshall spoke





in support of moving forward with the proposal put out for Public Hearing, because it provides "simplicity and uniformity." Commissioner Beard was clear about not settling for a compromise but, rather, fulfilling the Board's obligation to all the interested parties by adopting the best proposal and "getting it right." The Board then passed the following motion:

MSC: To adopt the proposed Rules and Regulations put out for Public Hearing with the additional minor amendments proposed by Commissioners Beard and Marshall, effective January 1, 2009.  
(Marshall/Mosbrucker: 3-2; Gruber, Murphy dissenting)

The final regulations, effective January 1, 2009, are as follows below:

**Section 6.16 Utility Passthrough**

(Added August 24, 2004; Subsection (i) amended September 21, 2004; Amended December 16, 2008, effective January 1, 2009)

The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served after November 1, 2004:

(a) Where a landlord pays for gas, electricity and/or steam provided directly to the unit occupied by the tenant and/or to the common areas of the property in which the unit is located, and seeks to recover the increase in the cost of these utilities from the tenant, the landlord may pass through the increased costs of the utilities between the "base year" and the comparison year, as set forth below.

(b) Determination of Initial "Base Year"

(i) For all tenancies existing on December 31, 2003, the initial "base year" for purposes of this section shall be calendar year 2002 with the following exception:

(A) For utility passthrough petitions filed prior to January 1, 2009, where a utility passthrough was in effect for a tenancy on November 1, 2004, the landlord could elect to use calendar year 2002 as the initial "base year" or elect to continue to use the earlier "base year", provided that the landlord petitioned the Board for approval of the earlier "base year" and the Board determined that the earlier "base year" was proper under Section 4.11 of these Rules.

(B) For utility passthrough petitions and Utility Passthrough Calculation Worksheets filed on or after January 1, 2009, the initial "base year" for all tenancies with an approved earlier "base year" shall be calendar year 2003.

(ii) For all new tenancies commencing after December 31, 2003, the initial "base year" shall be the calendar year immediately preceding the year of the inception of the tenancy.

(iii) A landlord may petition the Board for approval of an alternate "base year" if the landlord became an owner of record after December 31, 2002 and demonstrates a good faith, but unsuccessful, effort to obtain the utility bills from the former landlord and/or the utility company that are necessary to establish the "base-year" utility costs required by subsections (b)(i) or (b)(ii). The Board will not approve an alternate "base year" that creates exaggerated results unless the proposed alternate "base year" coincides with the landlord's first full calendar year of ownership.

(c) Subsequent Adjustments to Initial "Base Year"

Different tenants in the same property may have different initial "base years" depending on when they moved into the property or whether the Board has approved use of an earlier "base year" pursuant to subsection (b)(i) above or use of an alternate "base year"



pursuant to subsection (b)(iii) above. The initial "base year" utility costs shall be adjusted every five years as follows:

A new "base year" is established at the end of every fifth calendar year after the initial "base year". For example, where the initial "base year" is 2002, the new "base year" shall be 2007 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2009 and December 31, 2013. If the tenancy continues for an additional five years, the "base year" will become 2012 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2014 and December 31, 2018, and so on. For another example, where the initial "base year" is 2003, including those tenancies that had an earlier "base year" prior to January 1, 2009, the new "base year" shall be 2008 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2010 and December 31, 2010. If the tenancy continues for an additional five years, the "base year" will become 2013 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2015 and December 31, 2019, and so on. For another example, where the initial "base year" is 2004, the new "base year" shall be 2009 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2011 and December 31, 2015. If the tenancy continues for an additional five years, the "base year" will become 2014 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2016 and December 31, 2020.

(d) Determination of "Comparison Year"

For purposes of this section, the "comparison year" in all cases shall be the calendar year immediately preceding the filing of the landlord's Utility Passthrough Calculation Worksheet or Petition for Approval of Utility Passthrough.

(e) Petition Required for Certain Utility Passthroughs

Effective January 1, 2009, the landlord is required to file a Petition for Approval of Utility Passthrough when using a comparison of utility costs for the prior two calendar years (e.g. 2007/2008 in 2009, 2008/2009 in 2010, 2009/2010 in 2011, etc.). The petition shall be on a form prescribed by the Board. The petition shall specify the units on the property that are subject to the petition. The petition will be decided without a hearing unless the Administrative Law Judge determines that a hearing is required.

(f) Where the landlord is required to file a Petition for Approval of Utility Passthrough, the landlord must file the petition before giving legal notice of a rent increase for a utility passthrough. The petition must be filed no more than twelve months after the "comparison year" listed in the petition. The notice of rent increase shall be in conformance with the requirements set forth in Section 4.10 above and shall further include the dollar amount requested for the utility passthrough. This increase for the utility passthrough shall be inoperative unless and until the petition is approved by the Administrative Law Judge. Any amounts approved by the Administrative Law Judge shall relate back to the effective date of the legal notice, if given. A landlord may choose instead not to serve legal notice of a proposed utility passthrough until after the decision of the Administrative Law Judge is rendered. In any event, no rent increase approved by the Administrative Law for a utility passthrough shall become effective until the tenant's anniversary date.

(g) Petition Not Required for Certain Utility Passthroughs

Effective January 1, 2009, the landlord is not required to file a Petition for Approval of Utility Passthrough using a comparison of costs for years other than the prior two calendar years. For example, in 2009, pursuant to subsection (e) above, the landlord must file a petition for "base year" 2007 and "comparison year" 2008 in order to impose a utility passthrough, but need not file a petition for "base years" 2003, 2004, 2005 or 2006 and "comparison year" 2008. However, in order to impose a utility passthrough where a petition is not required under subsection (e), the landlord must comply with the following requirements:



(i) For each year that the landlord seeks to impose a utility passthrough where a petition is not required under subsection (e), the landlord shall file one Utility Passthrough Calculation Worksheet with the Rent Board for each "base year" used, on a form prescribed by the Board, that shows how the passthrough was calculated. The Worksheet shall be filed within twelve months of the "comparison year" used in calculating the amount of the passthrough. The Rent Board shall review ten percent (10%) of all Worksheets filed with the Board. In addition, if there is no prior utility passthrough petition on file for a property for which a Worksheet is filed, the Rent Board shall review at least one Worksheet for that property. In conducting a Worksheet review, the Board may take whatever action the Board deems necessary including, but not limited to, requiring the landlord to file evidence to support the calculations in the Worksheet, requiring the landlord to file a Petition for Approval of Utility Passthrough, scheduling a hearing, or reviewing additional Utility Passthrough Calculation Worksheets.

(ii) The landlord must file the Worksheet with the Board before giving legal notice of a rent increase for a utility passthrough. The notice of rent increase shall be in conformance with the requirements set forth in Section 4.10 above and shall further include the dollar amount requested for the utility passthrough. The landlord must provide the tenant with a file-stamped copy of the Utility Passthrough Calculation Worksheet at the time of service of the notice of rent increase.

(iii) A tenant who receives a utility passthrough under this subsection (g) may file a hardship application with the Board within one year of the effective date of the passthrough, and may be granted relief from all or part of such passthrough based on hardship.

(h) Laundry Facilities

Where the utility bills include the cost of gas and/or electricity for laundry facilities and the landlord charges a user fee for the laundry facilities, the landlord may not pass through any increase in the building's cost of utilities unless the landlord complies with one of the following subsections:

(i) where the laundry facilities are separately metered in both the "base year" and "comparison year", the landlord shall not include the utility costs for the laundry facilities in the utility passthrough calculation; or

(ii) where the laundry facilities are not separately metered in both the "base year" and the "comparison year" and there is a third party vendor that collects the user fees from the laundry facilities, the landlord shall deduct the income actually received by the landlord from the third party vendor from the total utility costs for the building; or

(iii) where the laundry facilities are not separately metered in both the "base year" and the "comparison year" and there is not a third party vendor that collects the user fees from the laundry facilities, the landlord shall deduct 50% of the user fees actually collected by the landlord from the total utility costs for the building; or

(iv) where the laundry facilities are not separately metered in both the "base year" and "comparison year", the landlord shall deduct the actual costs of utilities that serve such laundry facilities, using a methodology that has been approved by the Rent Board.

(i) Where the utility bills include the cost of gas and/or electricity for laundry facilities and the laundry facilities are not available to or operated for the benefit of the tenant, and the laundry facilities are not separately metered in both the "base year" and "comparison year", the landlord may not pass through to that tenant any increase in the building's cost of utilities.

(j) Calculation of the Utility Passthrough

The landlord shall calculate the amount of the utility passthrough as follows:

(i) Compile the utility bills for the "base year" and the "comparison year"





as defined in subsections (b), (c) and (d) above. The utility passthrough shall be based on actual costs incurred by the landlord during the relevant calendar years, regardless of when the utility bill was received or paid.

(ii) Calculate the total utility cost for the "base year" and the total utility cost for the "comparison year".

(iii) Where the laundry facilities are not separately metered in both the "base year" and the "comparison year", compile evidence of and calculate the actual cost of utilities that serve the laundry facilities in the "base year" and the "comparison year".

(A) Where the landlord cannot prove the actual cost of utilities that serve the laundry facilities and a third party vendor collects the user fees from the laundry facilities, compile evidence of and calculate the income actually received by the landlord from the third party vendor for the use of the laundry facilities in the "base year" and the "comparison year".

(B) Where the landlord cannot prove the actual cost of utilities that serve the laundry facilities and the landlord collects the user fees from the laundry facilities, compile evidence of the user fees actually collected by the landlord for the use of the laundry facilities in the "base year" and the "comparison year" and calculate 50% of the amount collected.

(iv) Where the laundry facilities are not separately metered in both the "base year" and the "comparison year", subtract the utility costs for the laundry facilities, as calculated in subsection (iii) above, from the total utility cost for the "base year" and the total utility cost for the "comparison year".

(v) Subtract the total "base year" utility cost (excluding utility costs for the laundry facilities) from the total "comparison year" utility cost (excluding utility costs for the laundry facilities) to get the utility cost increase. If there is no increase or if there has been a decrease, no passthrough is allowed.

(vi) Divide the resulting figure, if greater than zero, by twelve (12) to determine the average monthly utility increase for the entire property.

(vii) Divide the average monthly utility increase by the number of rooms in the property to get the amount of the utility passthrough that may be imposed for each room. For purposes of this section, the number of rooms in a property shall be calculated by presuming that single rooms without kitchens are one room units, studios are two room units, one bedroom units without a separate dining room are three room units, and so on. Each parking space and garage space in the building which is included in a tenant's rental or for which a user fee is charged shall be counted as one room. Areas used for commercial purposes but for which no user fee is charged to the tenants, including but not limited to management offices and retail space, shall be included in the room count in a manner that most reasonably takes into account the size of the space and its utility usage.

(viii) To get the monthly utility passthrough for a unit, add the number of rooms in the unit to the number of rooms for parking and/or garage spaces included in the tenant's rental or for which a user fee is paid by the tenant, and multiply that total number of rooms by the monthly utility increase per room.

(k) No landlord may pass through any increase in the cost of utilities to a tenant until the tenant has occupied the unit in the subject property for one continuous year.

(l) Each utility passthrough shall apply only for the twelve-month period after it is imposed.

(m) Nothing in this section or in these Rules and Regulations shall be interpreted as requiring any landlord to pass through any utility increase or to increase any tenant's rent.

(n) The amount of rent due from the tenant for any utility passthrough shall be due on the same date as a rent payment normally would be due.





(o) A utility passthrough may be imposed only at the time of an annual rent increase. However, no amount passed through to the tenant as a utility increase shall be included in the tenant's base rent for purposes of calculation of the amount of rent increases allowable under the Ordinance and these Rules and Regulations.

(p) The provisions of this Section shall be deemed a part of every rental agreement or lease, written or oral, for the possession of a rental unit subject to the Ordinance unless the landlord and the tenant agree that the landlord will not pass through any utility increases, in which case such agreement will be binding on the landlord and on any successor owner of the property.

(q) Where a utility increase has been lawfully passed through to the tenant, a change in the ownership of the property in which the tenant's unit is located will not affect the tenant's liability to pay the amount passed through.

#### VIII. Remarks from the Public

A. The Gateway tenant Bobby Coleman expressed his displeasure at the fact that Managing Director Clay Tominaga's documents weren't available to the public for review.

B. Phil Page of the Golden Gateway Tenants' Association suggested adding indexing to the 2003 base year methodology.

C. Clay Tominaga of The Gateway said that he actually prefers filing petitions for approval of utility passthroughs; if the Rent Board certifies the numbers, he doesn't need to worry.

#### IX. Calendar Items

December 23<sup>rd</sup> & 30<sup>th</sup>, 2008 & January, 2009 – NO MEETINGS

February 3, 2009

7 appeal considerations (1 postponed and 2 rescheduled from 1/13/08)

Old Business: Petitions for Extension of Time

New Business: SRO Hotel Visitor Policy

#### X. Adjournment

President Gruber adjourned the meeting at 8:20 p.m.

NOTE: If any materials related to an item on this agenda have been distributed to the Commission after distribution of the agenda packet, those materials are available for public inspection at the office of the Rent Board during normal office hours.











